Supreme Court, U.S.
FILED

174 (1) No.

10-598 — NOV 1 - 2010

OFFICE OF THE CLERK

In The Supreme Court of the United States

RICHARD KLEINHAMMER,

Petitioner,

v.

CITY OF EL PASO DE ROBLES, JAMES APP, RICHARD RAMIREZ, ROGER PICQUET, JERRY BANKSTON, TEMPLETON COMMUNITY SERVICES DISTRICT, AND BILL MILLER

Respondent(s),

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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In pro se

QUESTIONS PRESENTED

1. The United States Court of Appeals in the Ninth Circuit Conclusions Contradicts this courts holding in *Anderson v. Liberty Lobby*, Inc., 477 U.S. 242 (1986) (discovery) for review . Pursuant to *Anderson v. Liberty Lobby Inc.* Where the nonmoving party has not had the opportunity to discover information that is essential to his opposition, summary judgment must be denied. (SUP. CT. R. 10(c).

With the Ninth Circuit court of appeals has sanctioning the lower court departure from accepted and usual course of judicial proceedings refusing to extend or continue discovery as to call for an exercise of this Court's supervisory power (SUP. CT. R. 10(a)) permitting summary reversal (SUP. CT. R. 16.1)

2. The Ninth Circuit court of appeals decision contradicts this courts holding in *Pace v. Diguglielmo* and conflicts with several decisions by a state court of last resort. SUP. CT. R. 10(c). The Ninth Circuit also sanctioned the District Courts denial of the motion for reconsideration without analysis on the bifurcated issue of claim tolling. The Ninth Circuit court of appeals has decided an important federal question that conflicts with a state court of last resorts and sanctioned a lower court departure from accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power (SUP. CT. R. 10(a)) permitting summary reversal (SUP. CT. R. 16.1)

3. The Ninth Circuit Court of Appeals decision contradicts this court holding in *Hudson v. Palmer* requiring post deprivation hearings all the worse to the owner when lacking. SUP. CT. R. 10(c).

LIST OF PARTIES

The name of the Petitioner is:

Richard Kleinhammer.

The names of the Respondents are:

City of El Paso De Robles,
(referenced as "CITY")

James App,

Richard Ramirez,

Roger Picquet,

Jerrry Bankston,

Templeton Community Services
District,(Referenced as "TCSD")

Bill Miller.

Name of Interested Non-Party:

California Department of Corrections (referenced as "CDCR")

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Richard Kleinhammer's petition for a Writ of Certiorari to review a final judgment of the United States Court of Appeals for the Ninth Circuit (entered June 22, 2010) and petition for panel rehearing (entered August 3, 2010) affirming the District Court's summary judgment of his complaint (entered February 12, 2009) and denial of a leave to file a motion for reconsideration(entered April 9, 2010).

OPINIONS BELOW

The opinion of the United States Court of appeals for the Ninth Circuit (CANBY, THOMAS, and W. FLETCHER) is not reported and is included in the Appendix (App. Infra, at 1). The final judgment of the United States Court for the Central District of California (Walters, JF) is not reported and is reproduced in the Appendix (App., infra, at 4)

STATEMENT OF JURISDICTION

The judgment of the United State Court of Appeals for the Ninth Circuit was entered on June 22, 2009. See App., infra, at 1. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1)

CONSTITUIONAL AND STATUTORY PROVISIONS INVOVLED

U.S. Const., Amend. 1,
... petition the Government for a redress of grievances...

U.S. Const., amend. VIII,
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const., amend. XIV, § 1:
...nor shall any State deprive any person of life, liberty, or property, without due process of law,

42 U.S.C § 1983 civil rights act
Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was

unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Federal Rules of Civil Procedure 33(a)(2)
An interrogatory may relate to any matter that may be inquired into under Rule 26(b)...

Federal Rules of Civil Procedure 33(b) (1) (A)
Responding Party, The interrogatories must be answered by the party to whom they are directed

Federal Rules of Civil Procedure 56(e)
(1)A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated....
(2) .... set out specific facts showing a genuine issue for trial.....

Federal Rules of Civil Procedure 56(f)
When Affidavits Are Unavailable, If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:
(1) deny the motion;
(2) order a continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be undertaken; or

(3) issue any other just order.

California Government Code 945.6(b);

When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, the time limit for the commencement of such suit is extended to six months after the date that the civil rights to commence such action is restored to such person.....

Cal Code of Regulations Title 15 § 3161 limitation

...Inmates may possess up to one cubic foot of legal materials/documents related to their active cases, in excess of the six cubic feet of allowable property in their assigned quarters/living area.

California penal code 2601(d)

To initiate civil actions, subject to a three dollar ($3) filing fee to be collected by the Department of Corrections, in addition to any other filling fee authorized by law, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.

STATEMENT OF THE CASE

This is an important 42 U.S.C. 1983 civil rights case filed in 2006 for over $ 800,000.00 in damages to real estate from Equal Protection violations. This case involves a Clean Water Act Federally funded wastewater service line to an intervening area which was provided to others except the Kleinhammer's TRACT 1679. The Fed R. Civ. P. 56 facts as follows:

Summary Judgment Without Discovery

Petitioner's only discovery was interrogatories propounded to respondents who refused to answer in July 2008. (App., Infra, at 45). Also see the LIST of unanswered questions below. Thereafter interested party CDCR employees made pro se petitioner unavailable[1] for an alleged parole violation next four (4) months (August 26 through December 26 , 2008) until 3 days after discovery closed. (App., Infra, at 52).

During that time Pro se petitioner filed for an extension of time raising the denial of access to his litigation files, denial of ability to attend or conduct depositions or discovery (App., infra, at 76-77)which was denied on November 13, (App., infra, at 74-75). On December 8, 2008 new counsel for petitioner filed a motion for a continuance (App., infra, at 58-73, 61) for time to review and to allow motions to compel answers to interrogatories, document request, conduct depositions, and other appropriate discovery which was denied December 22, 2008 (App., infra, at 56-57) on the bifurcated issue of claim tolling. New counsel was denied the chance to conduct discovery

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[1]After August 4, 2008 Notice of Related case CV-08-3843JFW (JTLx).

or catch up with the case and pro se was neatly tucked away on an alleged parole violation during the crucial discovery phase ironically regarding the bifurcated issue of claim tolling. Without any discovery for petitioner the court granted summary judgment to respondents (App., infra at 17).

The sequence is more complex as seen from the recent notice of related cases on August 4, 2008 (App.,infra at 126-132) to interested party CDCR employees just prior to their August 26, conduct above. The CDCR parole employees campaign of threats and sabotage was noticeable in April 2008 by suddenly changing petitioner parole conditions, taking up 2 hours a day of petitioner's time (App., infra, at 24), causing him pain and discomfort (App., infra, at 128), and threatening arrest. On May 22, 2008 petitioner made a written request for relief and CDCR employees did not grant any relief so petitioners was sidetracked further to seek legal relief (App., infra, at 128) which was served on CDCR employees in June 2008.

Respondents Kept The Records(App., infra at 22,108)

Respondent took a position of litigation with petitioner and all TRACT 1679 owner (App., Infra, at 22) following claim presentation (App. Infra, at 124-128) in 1993 prior to petitioner's 1994 incarceration.

It is uncontested the TRACT 1679 claims investigation lasted approximately four years(1993-1997) (App., Infra, at 32) until at least the 1997 settlements (App. Infra, at 32 fn1, at 80 exhibit 18). It is uncontested that the 1995 lawsuit reminded respondents of petitioners claims and ownership in the body of the complaint (App. Infra, at 112 ¶89). That the

investigation of claims included approximately 20 depositions (App. Infra, at 113-120), respondent TCSD even judicial noticed page 5 of the complaint identifying petitioners 3 lots (App., infra, at 112 ¶89), during depositions asked why petitioner was not suing at that time (App., infra, at 112-113 ¶90-92) naming petitioner as a witness (App., infra, at 23) and then filing motions to raise petitioner's spousal rape conviction (App., infra at 45, 128) but only much later was alleged victim recantation Brady materials produce (App., infra at 88-90).

For the same TRACT 1679 claims Respondents only claim of prejudice is that they may have to refresh their memories at the same time they admit they kept the massive records until 2006 as follows:

1. CITY kept 31 boxes and (App., infra, at 22, 108 ¶71),
2. TCSD kept voluminous, boxed, and stored records (App., infra at 22),

and petitioner (parents) kept 36 cubic feet. City nor TCSD ever obtained any release of liability following claim presentation from petitioner.

Unanswered Interrogatory

Some of the interrogatory questions propounded to respondents that were not answered as follows:

To CITY

9 - If anyone investigated claims or liability for YOU following receipt of Richard and John Kleinhammers' DRAFT LAWSUIT, KLEIN-HAMMERS' property or related to TRACT 1679, state their names and address

10 - If anyone investigated for YOU related to tolling of claims, liability, or statute of limitations

related to DRAFT LAWSUIT, TRACT 1679, or Richard Kleinhammer's interest from 1992 through 1997

16 Specify if you named Richard Kleinhammer as a witness during TRACT 1679 litigation and thereafter chose not to investigate claim tolling, damages and liability to Richard Kleinhammer despite naming him for deposition. If investigated specify all investigation conducted to discover why he was not suing at the time and possible future lawsuit. Specify any impediment to suing between 1994 through 1997 which YOU investigated or were aware of related to Richard Kleinhammer bringing a future suit for interest in TRACT 1679

22 Specify if YOU believed that Richard Kleinhammer could file a lawsuit against you after he was released from incarceration or if YOU decided not to investigate tolling of claims because you believed or were given the impression that Richard Kleinhammer could file a lawsuit against YOU following his release from incarceration.

23 · Specify if you believed or anticipated that Richard Kleinhammer would file a lawsuit against you following his release from incarceration.

To TCSD

15 · If anyone investigated for YOU related to tolling of claims, liability, or statute of limitations related to DRAFT LAWSUIT, TRACT 1679, or Richard Kleinhammer's interest from 1992 through 1997 state their names and address, and state whether such investigation was reduced to writing, and the substance of their investigation and findings.

16 · Identify each as to each person or entity from 1995 through 1997 that investigated for YOU including filing motions, documented, informed or made any COMMUNICATION to YOU including your attorneys, Richard Nichols, CITY council members, agents or employee related to Richard Kleinhammer being arrested, incarcerated, any

expected release date from incarceration, awareness that Richard Kleinhammer had sustained damages or sustained the same damages as his parent were litigating related to TRACT 1679. Identify each person named for deposition that was incarcerated and substance of investigation of liability for damages and claims in future suit.

21 - Specify all investigation conducted by YOU for liability or claims in future suit related to deposition question as why he (Richard Kleinhammer) was not suing at the time and possible future lawsuit. Please specify any impediment to suing between 1994 through 1997 which YOU investigated or were aware of related to Richard Kleinhammer bringing a future suit for interest in TRACT 1679.

24 Specify if YOU believed that Richard Kleinhammer could file a lawsuit against you after he was released from incarceration or if YOU decided not to investigate tolling of claims because you believed or were given the impression that Richard Kleinhammer could file a lawsuit against YOU following his release from incarceration. If so, state the name(s) as to each PERSON(s) and briefly describe the basis of YOUR belief whether it was a personal belief, advice of an attorney, or any other FACT or information you relied on. END OF 2008 INTEROGATORIES EXAMPLES.

Prolonged Denial of Records

Petitioner request to have litigation records set in were denied on several occasions by prison staff during his (1994-2005) incarceration (App., infra,at 122-123, ¶ 72-73). Furthermore Title 15 § 3161 limited excess legal materials to 1 cubic foot (App., infra at 25) which was already taken up with appeals and habeas corpus files for reversals (App., infra, at 36).

Fear of Retaliation Instilled

It is uncontested the petitioner feared he would be retaliated against by prison staff if he litigated while incarcerated as seen done systematically to others (App., infra at 109, ¶76-77), that the CITY had already retaliated after turning respondents in for a misdemeanor Federal grant violation in August 1993 (App., infra, at 103, ¶46) U.S. Attorneys Office , that if petitioner contacted respondents during incarceration they would stir up a fuss (App., infra, at 109 ¶76) and had been attempting to do just that during the 1995-1997 litigation (App., infra at 45, 128).

Denied Post Deprivation Damages

Respondents deny there is any duty to provide post deprivation remedies or damages. The District court agreed and the Ninth Circuit condoned that there is not duty of City. Respondent who only produced declarations that they may have to refresh their memories cannot honestly dispute the facts.

New Evidence

The several allied (contracted, MOU etc) agencies may be treated as one for the following participation: 1) 1990" CITY employees directing petitioner to the *chief of police* that was purportedly the acting CITY manager and go meet with him (App., infra, at 23) to discuss the Federal grant violation but he was unavailable. 2) CDCR and MBPD participated in taking or withholding three VHS video tapes labeled either CITY COUNCIL or TCSD (but did not take other VHS tapes) from petitioner home in August 2008 through July 2010. 3) in 2010 a fourth allied Sheriff ordered in a recurring pattern of docket timed contact that would violated the fourth amendment pressuring and harassing petitioner at home.

REASONS FOR GRANTING THE WRIT

show why it should grant cert (rule 10) and show why lower court erroneous and that it has national (effects others) importance compelling reason)· show

I. **The Ninth Circuit Conclusion Contradicts this courts holding in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) (discovery) and summarily sanctioned the District Court's departure from accepted and usual course of judicial proceedings.**

First, Where the nonmoving party has not had the opportunity to discover information that is essential to his opposition, summary judgment must be denied. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986).

This is precisely what happened. Respondents refused to answer interrogatories and pro se petitioner was being denied his opportunity to conduct discovery by sabotage of interested party CDCR employees making him unavailable to conduct discovery. The District court granted summary judgment to defendants without any discovery for petitioner as a none moving party.

This court should exercise its discretion whereas here the District Court far departed from the usual and accepted course of proceedings in conflict with

Anderson v. Liberty Lobby Inc. Id. 250 requiring denial of summary judgment absent a discovery opportunity essential to oppose summary judgment, especially in a case involving a fact intensive bifurcated issue of claim tolling discovery.

The interrogatories sought Fed R. Civ. P. 33(a)(2) and 33 (b)(1)(A) information related to claim tolling within the knowledge of defendants but defendants refused answer. This court should not overlook that CDCR repeats the denial of access to legal files that was already alleged, the gorilla in the room.

Second, The District court abused its discretion in making the decision to cut off discovery. *See Villegas-Valenzuela v. INS,* 103 F.3d 805, 813 (9th Cir. 1996). Pursuant to *Qualls v. Blue Cross*, 22 F.3d 839, 844 (9th Cir.1994) the District court abused its discretion by failing to grant a continuance.

The District Court had two important request following respondents refusal to answer interrogatories. First for pro se petitioners motion for extension of time[2] on November 4, and second for a continuance[3] Rule 56. on December 8, 2008 by new counsel but denied both motions.

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[2] App., infra, at 76-77Petitioners motions to extend discovery asserted as follows

1. Pro se could not conduct discovery;
2. he was denied access to all his litigation files;
3. there was a physical impediment to conducting depositions and attending depositions he needed to file for interrogatories (motion to compel answer).

[3] App., infra, at 61-62 · New counsel continuance asserted:

1. to compel answers to interrogatories
2. to conduct depositions

Couple with pro se being made unavailable for four (4) months, the district court grant of summary judgment was far departed from accepted and usual discovery by granting summary judgment without giving pro se petitioner or new counsel an opportunity to participate in discovery in conflict with this courts *Anderson v. Liberty Lobby* holding. This is coupled with the District court's abuse of discretion in denying both motions to extend discovery during the time pro se was made unavailable. This case should be remanded so that Pro se petitioner is given the opportunity to conduct discovery on the bifurcated issue of claim tolling.

The Ninth Circuit Court of Appeal Opinion applied a general tolling standard and only mentioned in the Denial of Rehearing that "Kleinhammer's remaining contentions are unpersuasive" (App., infra, at 1, 3) and cited no cases or facts condoning the departure from controlling law. Pursuant to *Anderson v. Lobby* de novo review of summary judgment this case should be remanded to the District court so that petitioner may actually conduct discovery on the bifurcated issue of claim tolling without sabotage.

2. The Ninth Circuit Court of Appeals Decision contradicts this courts holding in *Pace v. Diguglielmo* and conflicts with several decisions by a state court of last resort. The Ninth Circuit also sanctioned the

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3. for document productions
4. insufficient time to meet and confer in the short time

District Courts denial of the motion for consideration.

a. The Equitable Tolling standard applied is Contrary to this courts holding in *Pace v. Diguglielmo* and state court of last resort and used wrong standard of law The Circumstances Alleged.

The United states supreme Court enuciated the equitable tolling test in *Pace v. Diguglielmo.* A litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he had been diligently pursuing is rights and (2) some extraordinary circumstances stood in his way. *Pace v. Diguglielmo* 544 U.S. 408, 418 (2005); **Artiglio v. Sniff* 2008 WL 3833391 at p. 2 (C.D. Cal 2008), accord *Spitsyn v. Moore* 345 F.3d 796, 798-801 (9th Cir. 2003). The conflicts by using *Fink v. Shedler,* 192 F.3d 911, 916 (9th Cir. 1999) standard requiring (1) defendant must have had timely notice of the claim; (2) defendant must not be prejudiced by being required to defend the otherwise barred claim; and (3) plaintiff's conduct must have been reasonable and in good faith.").

In California, meaningful access to court may be considered protected under due process and equal protection... even if postponed until released. *Wantuch v. Davis* 32 Cal.App.4th 786, 792 (Cal.App. 2 Dist. 1995); *Yarborough v. Superior Court* [(1985)} 39 Cal.3d 197, 200-201)". The problem of inmate access to courts in civil matters remains is "a custom far more honored in its breach than in its observance (*Hoverstein v. Superior Court* 74 Cal.App.4th 636, 642-643, 68 Cal.Rptr..2d 197. 202 (Cal.App. 2nd Dist

1999): Plaintiff was pursuing his claims and had reached the discovery phase when petitioner was:

i.Denied access to legal files for tolling (4 month).

Even in the Ninth Circuit *Lott v. Mueller* granted equitable tolling where a prisoner was denied access to his legal files. *Lott v. Mueller* 403 F.3d 918, 924 (9th Cir. 2002).[4] Affidavit Fed.R.Civ.P56(e) and 56(f)

It is undisputed that pro se petitioner was denied access to his legal files and made unavailable to conduct discovery by interested and closely related CDCR employees until after discovery closed.[5] Neither the Ninth Circuit (App. G) or the District Court (App. E) provided analysis on point or what standard was is be applied for fact intensive tolling. Exercise of this courts supervisory powers to reverse and remand is appropriate because the record has sufficient proof that the petitioner was denied the ability to participate in discovery phase.

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[4] The statute of limitations period is tolled when the plaintiff is prevented from asserting a claim by the defendant's wrongful conduct, or when the plaintiff is faced with extraordinary circumstances beyond her control. *See Stoll v. Runyon*,165 F.3d 1238 (9Cir. 1999); *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1463 (C.D. Cal. 1996) (holding that because immigrant garment workers were alleged to have been falsely imprisoned at their place of work, all statutes of limitations, including the FLSA's statute of limitations, were tolled).

[5] Pro se petitioner request for legal files was denied by CDCR prison staff at all relevant times, e.g. entire time of incarceration and that the 1 cubic foot limitation pursuant to Tile 15 § 3161 was already taken up by habeas and appeal files

ii. Prolong Denial (First Amendment Access)

Under the constitution a prolonged denial of access to personal legal materials could violate the constitution. Brown v. Ayers 72 Fed.Appx. 578, 580 (9th Cir. 2003) citing Casey v. Lewis and quoting Bounds v Smith[6]. Access to information is protected under the United States constitution First Amendment. Pepperling v. Christ 678 F.2d 787 (9th Cir. 1982).

It is uncontested that petitioner suffered a prolonged denial of access to personal legal materials for over 11 year from the obvious small cell and the being a known massive 31 box record, from his request for access to his litigation files being denied by prison staff, and pursuant to title the 15 limit (1 cubic foot that was already taken up with writs and appeals). Petitioner was denied his fundamental constitutional rights to courts even if the state tolling fails to toll the claims for prolonged denial. However there were other specific state theories raised:

iii. Awareness of Impediment tolling theory.

A Particular application is made when defendants are aware of the circumstances causing the lack of access to the courts, he is not prejudice by the tolling of the statue of limitations (*Forti v. Suarez-Mason* 672 F.Supp 1351, 1550 (N.D. Cal. 1987).

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[6] Lewis v. Casey, 518 U.S. 343, 351, 135 L. Ed. 2d 606, 116 S. Ct. 2174 (1996) and quoting Bounds v. Smith, 430 U.S. 817, 825, 52 L. Ed. 2d 72, 97 S. Ct. 1491 (1997) a misuse of Casey v. Lewis by the lower courts it to railroad civil cases by saying that it perfectly constitutional to deny access to court to civil litigants which Califoria has recognized the constitutional violation as described above in *Hoverstein v. Superior Court Wantuch v. Davis, Yarborough v. Superior Court, and below in* Cal Pen Code 2601(d);

Respondents were aware of the 2008 discovery sabotage and were also aware plaintiff was incarcerated and the lack of access to the massive 31 boxes of litigation records at least the prohibition by law (title 15 § 3161) for which defendants kept until 2006 in obvious anticipation of the suit but did not answer the interrogatories.

iv. Once Investigated There Is No Prejudice tolling theory.

There is a specific theory of, Once investigated defendants are adequately protected from stale and deteriorated evidence (*Daviton v. Columbia*/HCA Healthcare Corp. 241 F.3d 1131, 1138-1139 (9th cir 2001); *Collier v. City of Pasedena* (Cal app. 2nd dist 1983) 142 Cal.App.3d 917 924-925, fn5

It is undisputed that respondent took a position of litigation with petitioner, investigated the precise claims in COUNT I and COUNT II for several years and kept the records and only claim they may need to refresh their memories as their bald claim of prejudice[7].

The Ninth Circuit Court of Appeals and district court decision contradict and California state court of last resort holdings in *Collier v. City of Pasedena* *Lantzy v. Centex Homes* and their own decision in *Daviton v. Columbia*/HCA Healthcare Corp.

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[7] (*Cervantes v. city of San Diego* 5 F.3d 1273, 1275 (9th cir 1993)(including defendants in privity although not nominally a party).

The Ninth Circuit Court of Appeals and district court fail to conduct a proper analysis to ad nauseam as above described. The equitable tolling holding of the Ninth Circuit and District Court violate both federal and state law for this court exercise of discretionary powers to reverse and remand this case for trial under the California equitable tolling standard pursuant to *Collier v. City of Pasedena* *Lantzy v. Centex Homes* once investigated claims there is a lack of bald prejudice and set a standard for national uniformity.[8]

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[8] Both Federal and California law recognize equitable tolling in certain instances, as in the case of inability to bring suit or exercise one's remedy." (*Bureerong v. Uvawas* 922 F.Supp. 1450, 1463 (C.D. Cal. 1996) citing *Lewis v. Superior* Ct. 175 Cal.App.3d 366, 380, 220 Cal.Rptr. 594 (1985). Furthermore California courts "have liberally applied tolling rules or their functional equivalents to situations in which the plaintiff has satisfied the notification purpose of a limitations statute." *Elkins v. Derby*, 12 Cal.3d 410, 418, 115 Cal.Rptr. 641, 647, 525 P.2d 81, 87 (1974).

In addition in collier the court notes that "It is not altogether clear whether the Supreme Court would insist on all three prerequisites. The policy rationale of *Elkins* and *Addison* suggests that in an appropriate case a statute of limitations might be equitably tolled where only the second prerequisite was fulfilled. But it is difficult to **imagine a situation where the defendant had a full opportunity to gather evidence relevant to the second claim** unless the other two prerequisites also were satisfied." (*Collier v. City of Pasedena* (Cal app. 2nd dist 1983) 142 Cal.App.3d 917 924-925, fn5 191 Cal.Rptr. 681 685-686: *Bacon v. City of Los Angeles* 843 F.2d 372, 374 (9TH cir. 1988). In *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir. 2002) shareholders were not given notice they might be subject to suit by him (Azer) personally separate from the

a. Impracticability

Impossibility means not only strict impossibility but also impracticability because of extreme and unreasonable difficulty, expense, injury or loss involved. *Board of Supervisors v. McMahon* 219 Cal.app.3d 286, 299-300, 268 Cal.Rptr. 219 225-226 (Cal.App. 3Dist 1990) citing *Oosten v. Hay Haulers etc. Union* (1955) 45 Cal.2d 784, 788, 291 P.2d 17.

Both Federal and California law recognize equitable tolling in certain instances, as in the case of inability to bring suit or exercise one's remedy." (*Bureerong v. Uvawas* 922 F.Supp. 1450, 1463 (C.D. Cal. 1996) citing *Lewis v. Superior* Ct. 175 Cal.App.3d 366, 380, 220 Cal.Rptr. 594 (1985). Equitable tolling of the statute of limitations may be proper where "circumstances effectively render timely commencement of action impossible or

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corporation. It is undisputed respondents had been informed of petitioner intent to sue and took a position of litigation over claims presented before petitioners incarceration. This leaves the balancing of the injustice to plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the ...limitations statute (*Lantzy v. Centex Homes*, 31 Cal.4th 363, 2 Cal.Rptr.3d at 660, 73 P.3d at 524(2002).

virtually impossible. Id 372 or compliance is impossible. Id 380.

In short interested party CDCR made it impossible for pro se petitioner to litigate this civil rights case while incarcerated and repeated the impracticability blocking petitioners discovery phase.

31 boxes of files and more...

19 depositions,

2 years of motions against two public entities from prison during incarceration was impracticable.

Although there is a right to litigate during incarceration pursuant to Cal. Pen. Code 2601(d) prison staff simply ignores it as has the district court. It appears the problem wording that is recited in *Lewis v. Casey,* 518 U.S. 343, 354-55, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) is that Bounds does not guarantee inmates the wherewithal to transform themselves into litigating engines capable of filing everything from shareholder derivative actions to slip and fall claims. The tools it requires to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration. In other words although there is a state law restoring the rights the California prison system clearly follows *Lewis v. Casey* so that impairing civil litigation is common practices and useful tactics. Under this regime petitioners was not even granted his 945.6(b) civil rights back.

Virtual impossibility claim tolling should have been granted particularly where any policy concern that require valid claims is satisfied since TRACT 1679 claims were settled to all other owners except petitioner with respondents taking advantage of petitioners conditions of confinement and complex case with a voluminous record rather than being unaware. Merely taking a computer used for litigation would end this type of complex litigation at the crucial discovery phase and of course interest party CDCR employees did that as well with years of litigation materials on it.

The Ninth circuit holding in this case ignore the impracticality standard and this court case of *Lewis v. Casey* conflict with the state court of last resort tolling doctrine of impracticability, in *Oosten v. Hay Haulers etc. Union.* This court should exercise its discretionary powers to reverse and remand for trial pursuant to California tolling doctrine of impracticability. Further this court may exercise its discretion to set a standard for national uniformity of the virtual impossibility possibly standard for uniformity.

b. Fear of retaliation

Equitable tolling applies to fear, such as fear of litigating while incarcerated. Equitable tolling is applicable due to fear of retaliation. (*Ateeq v. Najor* 15 Cal.App.4th 1351, 1356(Cal.App.4th Dist. 1993)(3 years duress forbearance...tolled the statute of limitation where threats were made to have the plaintiff's son arrested e.g estoppels). "Noting that the chilling effect of a threat on a prisoner's ability to

petition the government for redress of grievances "lies not in any negative actions eventually taken, but in the apprehension it creates in the recipient of the threat." *Brodheim v. Cry*, 584 F. 3d 1262, 1271 (9th Cir. 2009). Compare *Pratt v. Rowland* 65 F.3d 802, 807 (9th Cir. 1995) relying on *Sandin v. Conner* 515 U.S. 472, 487-488 n. 11, 115 S.Ct. 2293(1995))(may invoke the First and Eighth Amendments and the Equal protection Clause)

The facts are undisputed that petitioner had fear of retaliation by prison staff if he litigated while incarcerated as seen done to others which was alleged in 2006.

In 2008 CDCR employees committed several undisputed acts of retaliation including threats of arrest, sabotaging discovery, physically injuring pro se petitioner, and sending others to threaten physical injury. (App., infra, at 45, 51-52) There was more than just apprehension for claim tolling that is uncontroverted.

c. Equitable Estoppel

Equitable estoppel holds that a party may be precluded from taking a position because of his affirmative misconduct. *Leham v. U.S.* 154 F.3d 1010, 1016-1017 (9th cir. 1998); *Santa Maria v. Pacific Bell*, 202 F.3d 1170,1176 (9th Cir. 2000).

Estoppel prohibits defendants from changing their position to gain advantage in subsequent litigation. Respondents took a position of litigation with petitioner and was informed petitioner was incarcerated but without ever informing petitioner of any

change in their position. Respondents never obtained a release of liability that petitioner would not sue on the claims the he had presented and took a position of settlement of tract 1679 claims.

Respondents knowledge via counsel would understand that cal Gov Code 945.6 extends the statute of limitation on state claims (COUNT II) when they were presented prior to incarceration where there are impediments. The CITY asked other during deposition, noted petitioner stark absence and kept the records until 2006 when sued.

The Ninth Circuit sanctioned the District Courts misconduct with a general statement that Kleinhhamer's remaining issues were unpersuasive. The District court did mention that the complaint alleges equitable estoppel but was unaddressed in the opposition to summary judgment. However estoppel was raised on a motion for reconsideration in District court and in the Ninth circuit[9].

d. Extended Limitation Cal Gov Code 945.6(b) during entire time incarceration.

Respondents only claim of prejudice was that they may need to refresh their memories. Respondents should not be able to take a misleading position of litigating with petitioner and without informing petitioner of any change try to misled the court by saying they did not know petitioner would sue when

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[9] New counsel denied a continuance, pro se was made unavailable during discovery, and earlier pro se was sidetracked by having to spend hundreds of hours to file an injunction to enjoin misconduct of CDCR inflicting pain and discomfort on pro se petitioner

released (Cal Gov Code 945.6(b) extends the limitation period for conditions of confinement like Lewis v. Casey) and the undisputed fact that they kept all the records. Go to prison lose your home is simply not part of the punishment, and is of national importance.

3. The Ninth Circuit Court of Appeals decision contradicts this court holding in *Hudson v. Palmer* and *City of Monterey .v Del Monte Dune at Monterey* requiring post deprivation hearings

Even when the government takes property without initiating condemnation proceedings, there is no constitutional violation "'unless or until the state fails to provide an adequate post deprivation remedy for the property loss.'" *Hudson v. Palmer*, 468 U.S. 517, 532, n. 12, 82 L. Ed. 2d 393, 104 S. Ct. 3194 (1984)).

Even when the government takes property without initiating condemnation proceedings, there is no constitutional violation "'unless or until the state fails to provide an adequate post deprivation remedy for the property loss.'" *Hudson v. Palmer*, 468 U.S. 517, 532, n. 12, 82 L. Ed. 2d 393, 104 S. Ct. 3194 (1984)).

An unauthorized negligent or intentional deprivation of property requires meaningful post-

deprivation remedies. *Hudson v. Palmer* 468 v. 517, 533, 104 S.Ct. 3194 (1984)(procedural due process).

Upon failure to provide an adequate post-deprivation remedy, the disadvantage to the owner becomes all the greater (*City of Monterey .v Del Monte Dune at Monterey* 526 U.S. 687, 712, 119 S.Ct. 1624 (1999). Moreover, when the government repudiates its *duty* to provide just compensation, it violates the constitution, and its action are unlawful and tortuous (Id. 691, 1630).

As here City and TCSD had taken a position of litigation with pro se petitioner but failed to provide adequate post deprivation remedy settlement with all other TRACT 1679 owners except petitioner.[10] CITY and TCSD denied any duty of post deprivation remedies in 2006 prior to filing suit.

Contrary to City of Monterey v. Del Monte Dunes at Monterey defendants refused to provide meaningful post deprivation of property because pro se petitioner was incarcerated.

It is undisputed that pro se petitioner presented claim for COUNT One and COUNT Two and that CITY and TCSD took a position of litigation, that defendants knew of pro se petitioner's interest in and

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[10] The defendants (City and TCSD) effectively picked up the ball and left the court *under cover of darkness*. *Collier v. city of Pasedena* (Cal.App. 2 Dist 1983) 142 Cal.app.3d 917, 933 191 Cal.Rptr. 681, 691-692). They knew pro se petitioner was unable to continue with litigation once incarcerated.

that he was subsequently incarcerated, that they were reminded if petitioner interest but respondents CITY and TCSD settled claims with all other TRACT 1679 owners except pro se petitioner.

The District court simply denied as moot pro se petitioner motion for reconsideration without analysis and the Ninth Circuit Court of Appeals only says unpersuasive, which is meaningless. The Ninth circuit ruling is contrary to this court holding in *Hudson v. Palmer* requiring post deprivation remedies, unless it is the City of BELL rip off.

CONCLUSION

For the foregoing reason, Petitioner respectfully request that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

s/Richard Kleinhammer
Richard Kleinhammer
In pro se

APPENDIX A

[NOT FOR PUBLICATION]
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-55296

D.C. No. 8:06-cv-00798-JFW-JTL

RICHARD KLEINHAMMER,

Plaintiff - Appellant,

versus.

CITY OF PASO ROBLES; et al.,

Defendants - Appellees.

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted May 25, 2010**
[Filed: June 22, 2010, By Molly C. Dewer, Clerk, Doc: 17-1]

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Richard Kleinhammer, a former California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 and inverse condemnation action alleging that the defendants improperly denied sewer service to his property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2). Accordingly, Kleinhammer's request for oral argument is denied.

a district court's decision on equitable tolling where, as here, the facts are undisputed. Santa Maria v. Pac. Bell, 202 F.3d 1170, 1175-76 (9th Cir. 2000). We affirm.

The district court properly granted summary judgment for defendants. Kleinhammer failed to raise a genuine issue of material fact as to whether or not defendants had notice that he intended to pursue his claims and whether or not his conduct was reasonable during the applicable period. See Fink v. Shedler, 192 F.3d 911, 916 (9th Cir. 1999) ("Under California law, a plaintiff must meet three conditions to equitably toll a statute of limitations: (1) defendant must have had timely notice of the claim; (2) defendant must not be prejudiced by being required to defend the otherwise barred claim; and (3) plaintiff's conduct must have been reasonable and in good faith.") (citation and internal quotation marks omitted); see also Hinton v. Pac. Enters., 5 F.3d 391, 395 (9th Cir. 1993) (the burden to plead facts which would give rise to equitable tolling falls upon the plaintiff); Moreland v. Las Vegas Metro. Police Dep't, 159 F.3d 365, 374 (9th Cir. 1998) (on summary judgment plaintiff bears burden of presenting evidence to support complaint's allega-tions).

Kleinhammer's remaining contentions are unper-suasive.

AFFIRMED. 09-55296

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 09-55296
U.S. District Court for Central California,
Santa Ana

D.C. No. 8:06-cv-00798-JFW-JTL

RICHARD WILLIAM KLEINHAMMER,
pro se,

Plaintiff - Appellant,

versus.

CITY OF PASO ROBLES; et al.,

Defendants - Appellees.

MANDATE

[Filed: August 11, 2010 Molly C. Dwyer, Clerk, Doc:]

The judgment of this Court, entered June 22, 2010, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

Lee-Ann Collins
Deputy Clerk

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL
Case No. SA CV 06-798-JFW (JTLx)
Date: February 12, 2009
Title: Richard Kleinhammer -v- City of Paso Robles, et al.

PRESENT:
HONORABLE JOHN F. WALTER,
UNITED STATES DISTRICT JUDGE

Shannon Reilly	None Present
Courtroom Deputy	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None

ATTORNEYS PRESENT FOR DEFENDANTS:
None

PROCEEDINGS (IN CHAMBERS):
ORDER GRANTING DEFENDANTS CITY OF PASOROBLES, JERRY BANKSTON, RICHARD RAMIREZ,JAMES APP, AND ROGER PICQUET'S MOTION FORSUMMARY JUDGMENT [filed 1/9/2009; Docket No.231];

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS TEMPLETON COMMUNITY SERVICES DISTRICT AND BILL MILLER [filed 1/9/2009; Docket No. 241]

On January 9, 2009, Defendants City of Paso Robles, Jerry Bankston, Richard Ramirez, James App, and Roger Picquet (collectively the "City Defendants") filed a Motion for Summary Judgment. On January 9, 2009, Defendants Templeton Community Services District and Bill Miller (collectively the "TCSD Defendants") filed a Motion for Summary Judgment. On January 26, 2009, Plaintiff Richard

Kleinhammer ("Plaintiff") filed his Oppositions. On February 2, 2009, the City Defendants and TCSD Defendants filed their Replies. Pursuant to Rule 78 of the Fed-eral Rules of Civil Procedure and Local Rule 7-15, the Court found these matters appropriate for sub-mission on the papers without oral argument. These matters were, therefore, removed from the Court's February 9, 2009 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

1. Procedural and Factual Background

This action is based on Plaintiff's problems in obtaining a sewer connection to undeveloped property he previously owned in the County of San Luis Obispo. On December 9, 1971, the City of Paso Robles (the "City") and Templeton Community Services District ("TCSD") entered into an agreement providing that (1) TCSD would deliver its sewage to a designated point on Canon Street in the town of Templeton, located within TCSD, and (2) an interceptor line ("Interceptor Line") would be built to transport TCSD sewage from this connection point to the City waste treatment plant. The City obtained federal grant funds to construct the Interceptor Line, and the Interceptor Line was constructed in accordance with their agreement.

Plaintiff owned property consisting of 3 lots located in San Luis Obispo County, but outside the City of Paso Robles' city limits. The lots were quitclaimed to him by his parents. In 1985, Plaintiff's lots and the adjacent 49 lots owned by his parents, John and Dorothy Kleinhammer, were annexed by TCSD. The Kleinhammers did not object to the annexation, based on their understanding that TCSD would provide water and sewer services to the property in accordance with various municipal agreements. Also in 1985, TCSD annexed a 116-unit subdivision, known as "Country Oaks" which was adjacent to the Plaintiff's property.

In 1986, the Country Oaks subdivision was permitted to build a sewer line which connected to the Interceptor Line. Plaintiff and John Kleinhammer began contacting the City in

request a sewer "will serve letter" for their property. Plaintiff and his parents requested permission to have a sewer line serving their properties connect to the Interceptor Line at the Country Oaks location rather than at the designated location on Cannon Street.

On January 7, 1992, Plaintiff and his parents received a Tentative Tract Map for Tract 1679, from the County of San Luis Obispo approving development of their 52 lots, conditioned on TCSD providing sewer service. For approximately two years after they received the Tentative Tract Map, Plaintiff and his parents continued to request sewer service and the right to utilize the sewer connection through Country Oaks to the Interceptor Line for Tract 1679. Those requests were denied.

Because their requests were denied, on or about December 15, 1992, Plaintiff and his father caused a draft complaint to be delivered to TCSD. The draft complaint named Plaintiff Richard Kleinhammer and his father as plaintiffs, named TCSD, its Directors and former General Manager, and the City as defendants, and asserted claims for declaratory relief, mandamus, and damages for denial of substantive due process, denial of equal protection of laws, denial of civil rights and inverse condemnation, all based on the denial of sewer service to the Kleinhammers' property. In January 1993, the draft complaint was sent to the City. Plaintiff admits that the draft complaint describes "with particularity" the alleged wrongful actions of the defendants.

As of April 1994, Plaintiff had defaulted on his mortgage payments for his 3 lots, and he subsequently lost the property through foreclosure on September 30, 1994.

On January 13, 1995, Plaintiff's parents filed suit against the City and TCSD in the U.S. District Court, Central District of California ("Kleinhammer I"). In that action, the Kleinhammers asserted a claim under 42 U.S.C. § 1983 and state law claims for inverse condemnation and promissory estoppel related to the inability to obtain sewer service to their 49 lots. The inverse condemnation and promissory estoppel claims in Kleinhammer I were dismissed with prejudice

following the defendants' motion to dismiss, and the § 1983 claim was settled in 1997 prior to trial. Plaintiff was not a party in Kleinhammer I. During his deposition in Kleinhammer I, Plaintiff's father testified that he did not know why his son was not a party in Kleinhammer I.

Plaintiff was incarcerated from April 1, 1994 to November 2, 2005, and was housed at the California State Prison-Los Angeles County in Lancaster ("LAC") for over ten years. Plaintiff testified that he frequented the law library "as much as [he] could" while at LAC, sometimes as often as three times per week. Indeed, Plaintiff filed six habeas corpus petitions while incarcerated. In December 2001, Plaintiff enrolled at Newport University, a correspondence law school approved by the California State Bar, and received his Juris Doctorate degree in 2006.

Until January 1, 1995, California's prison tolling statute, Cal. Civ. Proc. Code § 352(a)(3), provided that prisoners' claims accruing during imprisonment were tolled during the entire term of their imprisonment. See Cal. Civ. Code § 352(a)(3) (repealed). However, effective January 1, 1995, the California Legislature repealed Section 352(a)(3) and enacted Cal. Civ. Proc. Code § 352.1, which limited the tolling period during imprisonment to two years. While incarcerated, Plaintiff researched or checked California's prison tolling statute on two separate occasions, once in 1996 and then not again until 2004 or 2005.[1] He states that on both occasions, the volume of the Code available in the law library contained the repealed version of Cal. Civ. Proc. Code § 352, which he relied on for

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[1] In his declaration in support of his Opposition, Plaintiff declares that he also checked the tolling provision shortly after he was incarcerated. *See* Plaintiff's Decl. ¶ 54. However, this statement is inconsistent with his prior sworn testimony, and therefore does not create a genuine issue of material fact to survive summary judgment. *See* Plaintiff's Deposition, 102:11-20; 135:25-136:5; *Block v. City of Los Angeles*, 253 F.3d 410,419 n.2 (9th Cir. 2001) ("A party cannot create a genuine issue of material fact to survive summary judgment by contradicting his earlier version of the facts."); *Bushnell v. Vis Corp.*, 1996 WL 506914, at *2 (N.D. Cal. Aug. 29, 1996).

his belief that his claims were tolled for the entirety of his imprisonment.2 Aside from checking the prison tolling statute twice, Plaintiff made no other attempt to research his potential claims against the City or TCSD during his incarceration, and made no attempt to contact the City or TCSD during his incarceration.3

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[2] Although the defendants dispute that the law library did not contain the current volumes of the California Code of Civil Procedure, in ruling on a motion for summary judgment, the Court must assume the truth of Plaintiff's statements on this issue. *See Hanon v. Dataproducts Corp.*, 976 F.2d 497, 507 (9th Cir. 1992).

[3] For the first time in his Declaration supporting his Opposition, Plaintiff states that some time between 1997 and 2003, he discovered as a result of his legal research that he needed to submit administrative claims to TCSD and the City in order to preserve his state law claims against them. Plaintiff states that he prepared separate claims against TCSD and the City, and sent them to the State of California. Shortly after he sent the administrative claims to the State of California, the State of California advised him by letter that TCSD and the City were not state agencies and that he would have to submit his claims to those local agencies. Plaintiff states that he feared retaliation if he contacted the City and TCSD directly while in prison and, as a result, asked the State of California to forward his administrative claims to TCSD and the City. Plaintiff's Decl., ¶¶74-76. However, in his deposition, Plaintiff contradicted his declaration: Q: After you went to jail in April of 1994, did you personally do anything to notify TCSD that you were going to file a lawsuit after you got out of prison?

[footnote continued from previous page]

A: I didn't - I didn't contact Templeton or Paso after I was incarcerated at all.

Q: So the answer is no, you did not do anything to notify them that you were going --

A: I didn't personally do anything. Deposition of Plaintiff, 126:23-127:5. A plaintiff cannot create a triable issue of fact by submitting a declaration which contradicts his prior deposition testimony. *See, e.g., Block v. City of Los Angeles*, 253 F.3d 410,419 n.2 (9th Cir. 2001) ("A party cannot create a genuine issue of material fact to survive summary judgment by

In January 2006, two months after he was released from prison, Plaintiff sent letters to the City's attorney, Iris Yang, and to TCSD's attorney, Stephen Kronick, offering to settle his claims prior to filing suit. Finally, on August 24, 2006, Plaintiff filed his first Complaint in this action. Plaintiff prepared his Complaint largely by copying from the complaint in Kleinhammer I.

Plaintiff's Third Amended Complaint alleges the following claims for relief: (1) a Section 1983 claim asserting violations of Plaintiff's due process and equal protection rights under the Fifth and Fourteenth Amendments, based on the discriminatory denial of sewer services; and (2) a claim for inverse condemnation. The sole issue the Court must decide on these Motions for Summary Judgment is whether equitable tolling applies to Plaintiff's claims.

II. Legal Standard

Summary judgment is proper where "the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. See Anderson v.Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A party opposing a properly made and supported motion for summary judgment may not rest upon mere denials but must "set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e); see also Taylor v. List, 880 F.2d 1040,1045 (9th Cir. 1989) ("A summary judgment motion cannot be defeated by relying solely on conclusory allegations unsupported by factual data."). In particular, when the non-moving party bears the burden of proving an element essential

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contradicting his earlier version of the facts."); *Bushnell v. Vis Corp.*, 1996 WL 506914, at *2 (N.D. Cal. Aug. 29, 1996). Not only do these facts in Plaintiff's declaration contradict his prior deposition testimony, even if the Court considered these facts, they would not raise any genuine issue of material fact. *See infra* n. 6.

to its case, that party must make a showing sufficient to establish a genuine issue of material fact with respect to the existence of that element or be subject to summary judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "An issue of fact is not enough to defeat summary judgment; there must be a genuine issue of material fact, a dispute capable of affecting the outcome of the case." American International Group, Inc. v. American International Bank, 926 F.2d 829, 833 (9th Cir. 1991) (Kozinski, dissenting).

An issue is genuine if evidence is produced that would allow a rational trier of fact to reach a verdict in favor of the non-moving party. Anderson, 477 U.S. at 248. "This requires evidence, not speculation." Meade v. Cedarapids, Inc., 164 F.3d 1218, 1225 (9th Cir. 1999). The Court must assume the truth of direct evidence set forth by the opposing party. See Hanon v. Dataproducts Corp., 976 F.2d 497, 507 (9th Cir. 1992). However, where circumstantial evidence is presented, the Court may consider the plausibility and reasonableness of inferences arising therefrom. See Anderson, 477 U.S. at 249-50; TW Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 631-32 (9th Cir. 1987). Although the party opposing summary judgment is entitled to the benefit of all reasonable inferences, "inferences cannot be drawn from thin air; they must be based on evidence which, if believed, would be sufficient to support a judgment for the nonmoving party." American International Group, 926 F.2d at 836-37. In that regard, "a mere 'scintilla' of evidence will not be sufficient to defeat a properly supported motion for summary judgment; rather, the nonmoving party must introduce some 'significant probative evidence tending to support the complaint.'" Summers v. Teichert & Son, Inc., 127 F.3d 1150, 1152 (9th Cir. 1997).

III. Discussion

Plaintiff concedes that his action is barred unless equitable tolling applies.[4] For both Plaintiff's section 1983 claim and

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[4] For the reasons explained in the Magistrate Judge's Final Report and Recommendation filed March 17, 2008, and adopted by this Court on March 17, 2008, absent equitable tolling, the statute of limitations for Plaintiff's § 1983 claim expired at the

for his state law inverse condemnation claim, the Court applies California's tolling rules. See, e.g.; Azer v. Connell, 306 F.3d 930, 936 (9th Cir. 2002) (applying California's tolling rules for a section 1983 claim, as long as they are not inconsistent with federal law); Bancorp Leasing and Financial Corp. v. August Aviation Corp, 813 F.2d 272 (9th Cir. 1987) (applying state law statutes of limitations and related tolling rules to state law causes of action).

"Equitable tolling is a judge-made doctrine 'which operates independently of the literal wording of the Code of Civil Procedure' to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness." Lantzy v. Centex Homes, 31 Cal. 4th 363, 370 (2003) (citations omitted). "As with other general equitable principles, application of the equitable tolling doctrine requires a balancing of the injustice to the plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the . . . limitations statute." Addison v. State of California, 21 Cal. 3d 313, 321 (1978). California courts have "applied equitable tolling in carefully considered situations to prevent the unjust technical forfeiture of causes of action, where the defendant would suffer no prejudice." Lantzy, 31 Cal. 4th at 370.

Under California law, a plaintiff must meet three conditions to equitably toll the statute of limitations: (1) defendant must have had timely notice of the claim; (2) defendant must not be prejudiced by being required to defend the otherwise barred claim; and (3) plaintiff's conduct must have been reasonable

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latest on September 30, 1997. Absent equitable tolling, the statute of limitations for Plaintiff's inverse condemnation claim expired at the latest on September 30, 2001. Although Plaintiff appears to invoke the doctrine of equitable estoppel in his Third Amended Complaint, Plaintiff makes no argument in his Opposition and presents no evidence that would support the application of equitable estoppel.

and in good faith. 5 See Fink v Shedler, 192 F.3d 911, 916 (9th Cir. 1999);

1. Timely notice

Plaintiff contends that he is entitled to equitable tolling because his parents' 1995 law suit against TCSD and the City provided defendants with timely notice of his claims.

Equitable tolling will relieve a plaintiff from the bar of a limitations statute "when, possessing several legal remedies he, reasonably and in good faith, pursues one designed to lessen the extent of his injuries or damage." Addison v. State of California, 21 Cal.3d 313, 317 (1978). In order to meet the timely notice requirement, "the first claim must have been filed within the statutory period" and "the filing of the first claim must alert the defendant in the second claim of the need to begin investigating the facts which form the basis of the second claim." See Collier v. City of Pasadena, 142 Cal. App. 3d 917, 924 (1983). Typically, courts will only apply this doctrine where the same partes are involved in both the first and second proceedings arising from the same or similar facts. See, e.g.,

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5 In *Guerrero v. Gates*, 442 F.3d 697 (9th Cir. 2006), the Ninth Circuit in summarizing California equitable tolling rules stated: "A plaintiff whose ignorance of the statutory period is excusable may file a lawsuit outside that period as long as he causes no prejudice to defendants
[footnote continued from previous page]
by doing so." The Ninth Circuit did not purport to fully summarize the requirements for equitable tolling under California law, and in finding equitable tolling inapplicable, relied on all three factors that California courts consider – lack of notice, prejudice to the defendant, and no reasonable and good faith conduct on the part of the plaintiff (i.e. plaintiff did not claim ignorance of the applicable statute of limitations). More importantly, even if the only requirement for equitable tolling for a plaintiff whose ignorance of the statutory period is excusable is lack of prejudice, the Court has found, as discussed infra, that the defendants would be prejudiced if they have to defend this action nearly twelve years after the accrual of Plaintiff's claims.

Collier, 142 Cal. App. 3d at 924 (for a defendant to have timely notice of a claim, "generally this means that the defendant in the first claim is the same one being sued in the second); Javor v. Taggart, 98 Cal. App. 4th 795, 804-04 (2002) (finding equitable tolling inapplicable in part because defendant was not a party to plaintiff's first claim); Garabedian v. Skochko, 232 Cal. App. 3d 836, 847 (1991) (finding equitable tolling inapplicable where defendant was not a party to plaintiff's first claim).

Although courts have occasionally applied the doctrine of equitable tolling where a defendant was not a party to the first proceeding,, Plaintiff does not cite to, and the Court has not found, a single case holding that a defendant had timely notice of a plaintiff's claim, where the plaintiff was not a party to the first proceeding. Indeed, in the one case to address such an argument, the Ninth Circuit found that the defendants did not have timely notice of plaintiff's claim when he was not a party to the first lawsuit. See Azer v. Connell, 306 F.3d 930, 936 (9th Cir. 2002) (suit by corporation did not provide defendants with notice that they might be subject to a later civil rights suit by its sole shareholder and the statute of limitations was not equitably tolled as
to him.). It is undisputed that Plaintiff was not a party to his parents' lawsuit in Kleinhammer I.

Although Plaintiff was named in the draft complaint delivered to the City and TCSD, such an informal action is insufficient to provide defendants with the requisite notice that he would be filing a claim more than ten years later. Cf. 65 Butterfield v. Chicago Title Insurance Co, 70 Cal. App. 4th 1047, 1063 (1999) (finding equitable tolling inapplicable where plaintiff engaged in informal negotiations to resolve dispute, stating plaintiff "cites no authority holding that merely engaging in informal negotiations tolls the statute."). If anything, the fact that Plaintiff was not named as a party in his parents' later complaint gave the defendants some assurance that he would not be filing suit. Indeed, defendants heard nothing from Plaintiff during his entire incarceration.

Moreover, even if the Court found that Plaintiff's draft complaint or Kleinhammer I gave defendants timely notice of

Plaintiff's claims, the statutes of limitations would only be tolled during the pendency of the lawsuit, not indefinitely. See Musaelian v. Sonoma County Sheriff's Dep't, 2007 WL 1864342, at *2 (N.D. Cal. June 28, 2007) (citing Martell v. Antelope Calley Medical Center, 67 Cal. App. 4th 978, 985 (1998)) ("Although California law provides for equitable tolling during the pendency of litigation in another forum, the statute of limitations is only tolled while the first suit is pending."). Even if that time period (at most two years) is added on to the end of the limitations period, Plaintiff's action would still be barred.

2. Prejudice

"Fairness to the defendant requires that a case be brought when memories have not been affected by time, when all pertinent witnesses can still be called, and when physical evidence has not been destroyed or dispersed." Jones v. Blanas, 393 F.3d 918, 928 (9th Cir. 2004). In this case, nearly twelve years passed between the accrual of Plaintiff's claims and the filing of this lawsuit. Understandably, key witnesses' memories have faded. See App Decl. at ¶ 4; Bankston
Decl. at ¶ 4, Picquet Decl. at ¶ 3; Ramirez Decl. at ¶ 4; Van Orden Decl. at ¶ 15; Miller Decl. at ¶ 6.
Whether these witnesses will be able to refresh their recollection by reviewing their depositions in Kleinhammer I or other records is uncertain, and even if they are able to do so, such testimony would not be as accurate or as credible as testimony presented shortly after the events at issue. Moreover, some parties to this lawsuit, including Plaintiff and Picquet, were never deposed, and
did not otherwise participate in Kleinhammer I.

Accordingly, the Court finds that defendants would be prejudiced if they were required to defend Plaintiff's otherwise barred claims nearly twelve years after they accrued.

3. Reasonable and good faith conduct

To be entitled to equitable tolling, a plaintiff must act reasonably and diligently in asserting his rights. See Lantzy v. Centex Homes, 31 Cal. 4th 363, 379 (2003).

Plaintiff asserts that he acted reasonably in waiting until his release from prison to file this lawsuit, because he twice checked California's prison tolling statute while in prison, once in 1996, and then not until 2004 or 2005, and that both times the volume of the Code contained the repealed version of Cal. Civ. Proc. Code § 352. As a result, it is undisputed that Plaintiff did not check the prison tolling statute even once over a span of 8 consecutive years. Lay people, especially one who filed 6 habeas corpus petitions and pursued a law degree, are certainly aware that laws are subject to change. By failing to check the status of the prison tolling statute for such a lengthy time period, the Court concludes that Plaintiff did not act reasonably or diligently in asserting his rights.[6] Instead, even though he was a named plaintiff in the draft complaint prepared over a year before his incarceration, and even though he largely copied the complaint filed in Kleinhammer I in January 1996 in drafting his Complaint in this action, Plaintiff waited until August 24, 2006 to file this lawsuit, nearly twelve years after the accrual of his claim, and 9 months after his release from prison. Cf. Collier v. City of Pasadena, 142 Cal. App. 3d 917, 926 (1983) ("Perhaps, if a plaintiff delayed filing the second claim until the statute on that claim had nearly run, even after crediting the tolled period, his conduct might be considered unreasonable.").

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[6] Even if the Court were to consider Plaintiff's statements regarding his preparation of administrative claims against TCSD and the City, which contradict his previous deposition testimony, Plaintiff's failure to submit these claims to the local agencies, after he was specifically advised by the State of California to do so, further demonstrates that he did not act reasonably or diligently in asserting his rights. Although Plaintiff states that he requested that the State of California forward his administrative claims to TCSD and the City because he "feared" contacting them directly, Plaintiff has failed to explain why contacting TSCD and the City with a claim indirectly would present any less of a fear of retaliation and he has not presented any evidence that such fear of retaliation was warranted.

Plaintiff also asserts that "it is not reasonable to expect [him] to have filed this litigation from prison." As Magistrate Judge Lum's Report and Recommendation, adopted by this Court, recognized: "Plaintiffs routinely file and prosecute lawsuits despite . . . normal incidents of incarceration." In addition, California's Legislature has already accounted for the normal hurdles prisoners may face in litigating from prison, by giving them an additional two years to file suit. See Cal. Civ. Proc. Code § 352.1. Because there is no evidence that Plaintiff faced an unusual or extraordinary hurdle to filing suit, the Court finds Plaintiff's argument unpersuasive.7

Because the Court finds, based on the undisputed facts, that (1) defendants did not have timely notice of Plaintiff's claims, (2) defendants would be prejudiced if they were required to defend the otherwise barred claims, and (3) Plaintiff's conduct was not reasonable, the Court concludes that equitable tolling is inapplicable. Accordingly, Plaintiff's claims are barred by the statutes of limitations.

IV. Conclusion

For the foregoing reasons, Defendants City of Paso Robles, Jerry Bankston, Richard Ramirez, James App, and Roger Picquet's Motion for Summary Judgment is GRANTED. Defendants Templeton Community Services District and Bill Miller's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED.

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7 Plaintiff argues in his Opposition that "due process prohibits the deprivation of right caused by an out-of-date prison library," and on this basis, equitable tolling should apply. The cases cited by Plaintiff in support of this proposition involved analysis of equitable tolling under the federal Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Assuming for the sake of argument that AEDPA cases are applicable to Plaintiff's claims, those cases still require Plaintiff to have been pursuing his rights diligently. *See, e.g., Roy v. Lampert*, 465 F.3d 964, (9th Cir. 2006). As discussed, Plaintiff has not demonstrated that he pursued his rights diligently while in prison.

The Clerk shall serve a copy of this Minute Order on all parties to this action.

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. SA CV 06-798-JFW (JTLx)
Date: April 8, 2009

Title: Richard Kleinhammer -v- City of Paso Robles, etc., et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	Court Reporter
Courtroom Deputy	None Present

ATTORNEYS PRESENT FOR PLAINTIFFS:
None
ATTORNEYS PRESENT FOR DEFENDANTS:
None

PROCEEDINGS (IN CHAMBERS): ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE A MOTION FOR RECONSIDERATION OF SUMMARY JUDGMENT ORDER AND JUDGMENT

[filed 3/24/2009; Docket No. 294];

On March 24, 2009, Plaintiff Richard Kleinhammer ("Plaintiff") filed a Motion for Leave to File a Motion for Reconsideration of Summary Judgment Order and Judgment. On April 2, 2009, Defendants City of Paso Robles, Jerry Bankston, Richard Ramirez, James App, and Roger Picquet

filed their Opposition. On April 2, 2009, Defendants Templeton Community Services District and Bill Miller filed their Opposition. The Court finds that no additional briefing is required on Plaintiff's motion, and pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for April 13, 2009 is hereby vacated and the matter taken off calendar. After considering the moving and opposing papers and the arguments therein, the Court rules as follows:

On February 12, 2009, the Court granted Defendants' Motions for Summary Judgment and entered judgment in favor of all defendants. On February 20, 2009, Plaintiff filed a Notice of Appeal from the Court's Order and entry of Judgment. On February 25, 2009, the Court received a Motion for Reconsideration of Summary Judgment Order and Judgment from Plaintiff. However, on February 26, 2009, the Court issued a notice of discrepancy rejecting the filing of the Motion, because there was no substitution of attorney on file.1 On February 27, 2009, Plaintiff again attempted to file a Motion for Reconsideration of Summary Judgment Order and Judgment, but on March 4, 2009, the document was stricken by the Court for failure to include any hearing information. Finally, on March 24, 2009, Plaintiff filed the current Motion for Leave to File a Motion for Reconsideration of Summary Judgment Order and Judgment.

"The filing of a notice of appeal generally divests the district court of jurisdiction over the matters appealed." Davis v. U.S., 667 F.2d 822, 824 (9th Cir.1982); see also United Nat'l Ins. Co. v. R & D. Latex Corp., 242 F.3d 1102, 1109 (9th Cir. 2001) ("Once a notice of appeal takes effect, the district court loses jurisdiction over the matter placed before the appellate court."). However, the district court retains jurisdiction, and a Notice of Appeal does not take effect, if a timely motion under Rule 59(e) is filed or if a motion for relief under Rule 60 is filed no later than 10 days after the judgment is entered. See Fed. R.App. P. 4(a)(4)(B)(i). Here, because Plaintiff did not

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[1] Plaintiff filed the Motion pro se, although counsel of record at the time was Craig M. Collins.

successfully file a Motion for Reconsideration under Rule 59 or Rule 60 until more than 10 days after the judgment, Plaintiff's Notice of Appeal filed on February 20, 2009 divested the Court of jurisdiction to reconsider its summary judgment order and judgment. Universal Trading & Investment Co. v. Kiritchenko, 2008 WL 114929, *3 (N.D. Cal. Jan. 10, 2008) ("[T]here was no timely Rule 59(e) motion pending at the time plaintiff filed its Notice of Appeal on October 15, 2007, and on that date the Court lost jurisdiction to consider any aspect of the case involved in the appeal."); Alward v. Burrelle's Information Services, 2001 WL 1708779, at *3 (D. Ariz. Dec. 5, 2001) ("[B]ecause Plaintiffs' Motion for Reconsideration was filed more than 10 days after entry of judgment, Plaintiffs' Notice of Appeal, filed on April 13, 2001, divested the Court of jurisdiction to consider Plaintiffs' Motion for Reconsideration.").

Accordingly, Plaintiff's Motion for Leave to File a Motion for Reconsideration of Summary Judgment Order and Judgment is DENIED.

IT IS SO ORDERED.

The Clerk shall serve a copy of this Minute Order on all parties to this action.

APPENDIX E

Richard Kleinhammer,
Pro per
P.O. Box 97
Morro Bay, CA 93443
Phone 805-801-1881

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Richard Kleinhammer,
Plaintiff,
vs.
City of Paso Robles, et al.,
Defendant(s)

Case No.: cv-06-0798-JFW(JTLx)
[filed February 27, 2009 EFC]

PLAINTIFF's MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORTOF MOTION FOR RECONSIDERATION OF SUMMARY JUDGMENT ORDER AND JUDGMENT; DECLARATION OF RICHARD KLEINHAMMER
FED. R. CIV. P. 59 & 60

Hon. John F. Walter

1. Introduction

Plaintiff's motion for reconsideration of Summary Judgment Order and Judgment of February 12, 2009 in favor of Defendant's, City of el Paso Robles, Roger Picquet, James App, Jerry Bankston, and Richard Ramirez (collectively herein "CITY") and Templeton Community Service District and Bill Miller (collectively herein "TCSD").

CITY and TCSD (Defendants) in PRIVITY were aware of plaintiff's lack of access to court evidenced by the extensive files (e.g.31 boxes, 36 cu.ft.) and conditions of confinement being a small 2 man cell and Title 15 § 3161 prohibition of record possession.

The Department of Corrections staff on several occasions refused to allow even 1 box of files to be sent in to plaintiff, during incarceration on numerous occasions.

Plaintiff also checked the library and believed he could sue when he was released and that the CITY and TCSD had been informed several times of plaintiff's intentions to file suit prior to incarceration disabilities and following incarceration. CITY made a big deal over plaintiff's absence from suit and property interest in 1996 and was informed again that plaintiff suffered the same damages as parents. The same nucleus of operative facts in the instant case were investigated from 1992 through 1997 with documents and depositions preserved. Thus the huge record plaintiff could not possess while incarcerated is still available to all parties. Parents lawsuit 95-0295AAH(JGX) will be referred to as Kleinhammer I and this case will be referred to as Kleinhammer II, Summary Judgment will be referred to as "MSJ", Exhibit will be referred to as Exh., and Declaration of Richard Kleinhammer will be referred to as "Decl. R. Kleinhammer".

FACTS

Written claim presentation was made to the CITY, TCSD, and those in PRIVITY in 1992-1993 as in DRAFT lawsuit (Exh. 1) to mitigate damages to the Kleinhammers' (TRACT 1679) like others (Exh. 2). Thereafter CITY and TCSD took the position if litigation (Exh. 3, 4, 5, 6, and 7). And were subsequently informed of plaintiff's incarceration (Exh. 8 and 9), were aware from the circumstances of the legal and physical disabilities (Exh. 10 and Decl. R. Kleinhammer ¶ 4 and 8), given the voluminous records (Exh. ¶ 10, 12, 13, and 14) which all parties were aware and kept in anticipation of this litigation by CITY, TCSD, and plaintiff's parents. CITY nor TCSD obtained a release of liability from plaintiff but only his parents when settling same claims as in Kleinhammer II. (Decl. R. Kleinhammer ¶ 16). Plaintiff was at that time a known part owner of TRACT 1679 three lots and 3 his home (Exh. ¶ 15, 16, and 9). Moreover all the records and testimony have been preserved (e.g. 31 boxes-CITY; voluminous, boxed and stored-TCSD; and 36 cubic feet-PLAINTIFF) (Exh. 11, 12, 13, and Decl. R. Kleinhammer ¶ 4 and 6) expecting litigation from plaintiff after his release from imprisonment.

All the defendants were or are employees and attorney of CITY and TCSD during the 20 year CLEAN WATER ACT grant. Their testimony (except Roger Picquet) was preserved by deposition along with others (20 depositions were taken in 1996 as noted in Kleinhammer I motions). There is no way plaintiff could have conducted these depositions while incarcerated which CITY and TCSD would readily understand.

The same law firm(s), attorney(s) or associates have been involved from the beginning (at least by 1989) representing CITY ad now either represent TCSD or the CITY (Exh. 16, 17, 18, 19, 5, and 11).

Plaintiff in Discovery has described the denial of the state Tort claim previously on August 20, 2008 at page 50 document number 373 therein. (Exh. 20); Decl R. Kleinhammer ¶ 14.

Plaintiff request for documents from the CITY were met with intimidation delay tactics of CITY staff which plaintiff's notes reveal.(Exh 7)(20 p.50 doc 391) CITY went to an extreme and claimed that the chief of police was acting CITY manager and go meet with him while CITY manager was allegedly on vacation. Plaintiff attempted to meet with the CITY POLICE CHIEF and went to the POLICE STATION but was unable to meet with him despite calls and appearance. CITY attorney refused to talk to Richard Kleinhammer because he believed the call was being recorded avoiding the best memory of conduct and the TRACT 1679 concern.(Exh. 7). Under the circumstances leading to arrest and recantation of alleged spouse-victim (Exh. 21). Plaintiff later discovered Roger Picquet had been appointed December 3, 1993 weeks before plaintiffs December 27, arrest. However further reason for alarm was seen early on during incarceration when plaintiff heard and saw staff retaliation against litigating prisoners (Decl. R. Kleinhammer ¶ 9). It was almost a relief that staff denied each request for records and legal files to be sent in, but the concern of surviving during incarceration always remained as described in the December 3, 2008 deposition of plaintiff. Plaintiff was placed in a cell with a lifer inmate by Department of Correction Staff (CDC) who on April 12, 1999 bite a 2 cm chunck off plaintiff's chin (Decl. R. Kleinhammer ¶ 7). CDC staff conduct included taking plaintiff's typewriter and never returning it, sending his law school books back to the vendor on several occasions, and presently adds denying plaintiff use of a computer from August 26, 2008 and adding GPS charging

2 hours a day at a crucial stage 4-01-2009 to 3-04-2009. Decl. R. Kleinhammer ¶9). Plaintiff's habeas corpus petitions and research took up the 1 cubic foot of excess allowed under California code of regulations Title 15 § 3161, plaintiff was more concerned about obtaining a release from incarceration by habeas corpus to get away from confinement and the volatile environment, and lived in conditions of confinement that included a small two man cell without any physical space for the records to litigate the instant case even if the records had been allowed (Decl. R. Kleinhammer ¶ 8, 13, 4, 5, and 6)

In the instant case plaintiff presented all of the following arguments in prior motions. CITY and TCSD simply failed to address the equitable tolling issue related to physical and legal disabilities, nor addressed the equitable tolling of impossibility/impracticability which state and federal courts apply, nor equitable estoppels, nor judicial estoppels, fears, and do not distinguish between the above constitutional tolling. (Decl. R. Kleinhammer . (Decl. R. Kleinhammer ¶ 10), and fail to apply the balancing test. Plaintiff was in the custody of interested party CDC until March 5, 2009. (Decl. R .Kleinhammer ¶ 9). Plaintiff also attempted to have a sur-reply filed (Exh. 22) but Mr. Collins would not. (Decl. R. Kleinhammer 17). Furthermore Plaintiff's deposition testimony was that he thought there was a communication to TCSD and CITY about his filing a lawsuit (e.g. after release) mischaracterized by TCSD. (Exh. 24)

ARGUMENT

Standard

A motion for reconsideration made to the judge who ruled on the underlying motion is made pursuant to Federal Rule of Civil procedure 59. The court may consider whether clear error occurred or the decision was unjust. Sissko v. Rocha 440 F.3d 1145, 1154 (9th Cir. 2006). The court may also consider a manifest showing of "failure to consider material facts" presented at the hearing. The court may open the judgment if one has been entered, take additional testimony, amend

findings of fact and conclusions of law and make new findings and conclusions.

For summary judgment the opposing party must demonstrate that the fact in contention is material i.e. fact that might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986). In resolving the Summary judgment motion, the court examines the pleadings, answers to the interrogatories, and admission on file, together with the affidavits. Anderson 477 U.S. at p. 255. A dispute is genuine, if the evidence is such that a reasonable jury cold return a verdict for the nonmoving party. Wool v. Tandem Computers, Inc. 818 F.2d 1433, 1436 (9th Cir. 1987).

ARGUMENT I

Equitable tolling impossibility is recognized in both state and federal court. Lott v. Mueller 304 F.2d 918, 922-925 (9th Cir. 2002); Alvarez-Machain v. U.S. 107 F.3d 696, 701 (9th Cir. 1996)(denial of access to legal material constituting extraordinary circumstances beyond prisoners control make it impossible to file on time); Forti v. Suarez-Mason 672 F.Supp. 1531, 1550, fn13 (N.D. Cal 1987) citing Lewis v. Superior Court 162 Cal.App.3d 152 where extraordinary events which are beyond the party's control prevent him/her from bringing a claim the limitation period is tolled until the barrier caused by the events is removed); Bureerong v. Uvawa 922 F.Supp. 1450, 1463 (C.D. Cal 1996), citing Lewis v. uperior Court 175 Cal.App.3d 336, 380 (Cal.App. 3 Dist. 1985).

Moreover in California impossibility not only means strict impossibility but also impracticability because of extreme and unreasonable difficulty, expense, injury or loss involved. Board of Supervisors v. McMahon 219 Cal.App.3d 286, 299-300 (Cal.App. 3 Dist. 1990).

In application of impossibility to the standard of general California equitable tolling the statute of limitations; (1) defendants must have had timely notice of the claim; (2) defendant must not be prejudice by being required to defend against the otherwise barred claim; and (3) plaintiff's conduct must have been reasonable and in good faith. Fink v. Shedler 192 F.3d 911, 916 (9th Cir. 1999). In the United States Supreme Court case Pace v. Diguglielmo a litigant seeking equitable tolling bears the burden of establishing two elements:

(1) that he had been diligently pursuing is rights and (2) some extraordinary circumstances stood in his way. Pace v. Diguglielmo 544 U.S. 408, 418 (2005);

Which standard is applicable to these circumstances?

(1) TIMELY NOTICE

Claim presentation can be made by sending a claim against a public agency by mail without proof of service. Call v. Los Angeles County General Hospital USC Medical Center (1978) 77 Cal.App.3d 911, 916-917. Plaintiff delivered a draft lawsuit to CITY and TCSD after which they both took the position of litigation. (Exh. 1, 3, 4, 5, 6, and 7) and CITY concedes this put them ON NOTICE. (Exh. 14) in their reply. A reminder was provided in Kleinhammer I in te body of the complaint (Exh. 15) and plaintiff understood that the state claims office sent a courtesy notice between 1997 and 2003. Thus plaintiff claims were sent to CITY and TCSD on at least two occasions in 1992-1993 and in 1995 if not all three times.

A controlling authority does not require the see party but includes defendants in privity although not nominally a party. Cervantes v. City of San Diego 5 F.3d 1273, 1276 n.3 (9th Cir. 1993); Collier v. City of Pasadena (1983) 142 Cal.App.3d 917, 924, 928-929 (notice factor may be satisfied where a defendant in the second claim was alerted to the need to gather and preserve evidence by the first claim even if not nominally a party Id. 928-929, here we have the rather unusual situation where notice to one defendant results in the timely collection of the very evidence needed by the second defendant and where the first is only to happy to share all that evidence with the second...lawyers from the same "law firm" Id. 929. In Cervantes the court describes... administrative proceedings would have necessarily involved the collection of evidence to rebut his claims Id. 1277 when adding individual defendants Id. 1274. All he defendants except Roger Picquet gave their testimony at a deposition in related case Kleinhammer I from which CITY, TCSD, attorneys, and plaintiff parents preserved the evidence in anticipation of this litigation. (Exh. 11, 12, 13 and Decl. R. Kleinhammer ¶ 6). Thus there was notice of claims and sufficient information to allow defendants to investigate and settle the matter if possible without litigation. Ovando v. City of Los Angeles 92 F.Supp.2d 1011, 1021 (C.D.

Cal. 2000). Particularly where defendant had an opportunity to begin gathering their evidence and preparing their defense from prior litigation. Gordon v. Law Offices of Aguire & Meyer 70 Cal.App.4th 972, 978-979. Daviton v. Columbia/HCA Healthcare Corp. 241 F.3d 1131, 1138-1139 (9TH Cir. 2003)(essentially facts identical); Collier v. city of Pasadena 142 Cal.App.3d 917, 924-925 (Cal.App. 2 Dist 1983)(facts so similar). The same TRACT 1679 claims are not disputed, e.g. City and TCSD describe as patterned after parents lawsuit Kleinhammer I.

Claim presentation is not the same as the negotiations that lulled plaintiff into inaction in which the court relies on the TCSD standard on page 6 of the order granting summary judgment citing Butterfield v. Chicago Title Insurance Co., 70 Cal.App.4th 1047, 1063 (1999)(informal negotiation to resolve dispute). After claim presentation being sent (at least twice) to mitigate damages defendants cannot lull plaintiff into a false sense of security of implied representation that the statute of limitations would not be asserted. Nichols-Brown Inc. v. City of San Jose 62 Cal.App.3d 526, 534 (Cal.App. 1 Dist. 1976). Equitable estoppel holds that a party may be precluded from taking a position because of his affirmative misconduct. Leham v. U.S. 154 F.3d 1010, 1016-1017 (9th cir. 1998); Santa Maria v. Pacific Bell, 202 F.3d 1170. 1176 (9th Cir. 2000). CITY and TCSD took a position of litigation following claim presentation and should be stopped from changing that position merely because some other informal negotiations occurred in an attempt to mislead the court. On page 6 of the summary judgment order of February 12, 2009 the court Cites Azer v. Connell 306 F.3d 930, 936 (9th Cir. 2002). In Azer the defendants were unaware of his ownership separate from the corporation which cannot be said in this case. Instead the key fact missing in Azer was notice is not missing in this case where CITY and TCSD had notice of plaintiff's claims, ownership, and interest in TRACT 1679 (Exh. 1, 15 (at p. 5:24-28), and Exh. 16). Thus CITY and TCSD investigated plaintiff's same claims from 1993-1997, including plaintiff's claims.

(2) PREJUDICE

A special application (exception to rule), if defendant was aware of the lack of access to court, he is not prejudice by

tolling of the statute limitations. Forti v. Suarez-Mason 672 F.Supp 1531, 1550 (N.D. Cal. 1987). CITY and TCSD were aware of plaintiff's conditions of confinement (small two man cell, and title 15 prohibition on records possession e.g. 1 cubic ft. if active) causing a lack of access to court and are not prejudice by the tolling of limitation period. (Exh. 10, 8, 11, 12, and 13). Moreover once investigated defendant is adequately protected from stale and deteriorated evidence. Daviton v. Columbia/HCA Healthcare Corp. 241 F.3d 1131, 1138-1139 (9th Cir. 2001).

Under California law the enabling statute to be tolled when plaintiff is under a legal or physical disability to commence an action. Bledstein v. Superior Court (Cal.App. 3Dist 1984) 162 Cal.App.3d 152, 161-164. As above given the voluminous record which everyone is aware (e.g. 31 boxes) plaintiff was under a physical disability in a small two man cell
without space and further under a legal disability pursuant to Title 15 § 3161 limitation of one (1) cubic foot of excess. Therefore CITY and TCSD had notice of the physical and legal disabilities of lack of access to court. Moreover CITY and TCSD investigated the same nucleus of operative facts preserving all the evidence and noted plaintiff's stark absence during parents litigation. (Exh. 9 CITY motion August 15, 1996 (p. 6:20-27)).

The evidence did not have meaningful access without his files. Lott v. Mueller 304 F.3d 918, 925 (9th Cir. 2002). (denied access to his legal files).

Under the constitution a prolonged denial of access to personal legal materials could violate the constitution. Brown v. Ayers 72 Fed.Appx. 578, 580 (9th Cir. 2003). Access to information is protected under the United States constitution First Amendment. Pepperling v. Christ 678 F.2d 787 (9th Cir. 1982). In a California case meaningful access to court may be considered protected under due process and equal protection... even if postponed until released. Wantuch v. Davis 32 Cal.App.4th 786, 792 (Cal.App. 2 Dist. 1995). This is pursuant to California Penal Code 2601(d) he right to file a bonafide civil suit which was denied to plaintiff. All defendants were aware of extensive depositions and grant sewer service related history between TCSD, CITY and property owners and State water resource control board.

On page 7 of the summary judgment order of February 12, 2009 the court relies on the premis that testimony may not be as accurate or as credible and some parties not deposed (e.g. Roger Picquet). The deposition instructions gave the defendants an opportunity to correct inaccuracies in their testimony which was recorded to defend against these same claims and same nucleus of operative facts of their involvement and personal conduct as employees, attorneys, and hired help. Moreover the massive record is preserved and more importantly CITY and TCSD's knowledge of the lack of access to court, he is not prejudice. Forti 672 F.Supp. at p. 1550 fn 13. Further prejudice to the defendants is construed liberally in plaintiff's favor. Daviton v. Columbia/HCA Healthcare Corp. 241 F.3d 1131, 1140 (9th Cir. 2001).

Plaintiff is entitled to await resolution of administrative proceedings in order to file state law claims and section 1984 claim together. Hood v. City of Los Angeles 804 F.Supp.65, 67 (C.D. Cal. 1992. After claim presentations were sent to CITY and TCSD in 1992 and 1995 (and state claims office) P may file suite following release from incarceration Cal. Gov. Code 945.6(b). Plaintiff and additional notifications were made in an effort to lessen the extent of damages before and during incarceration. Lucchesi v. Bar O Boys Ranch (9th Cir. 2003) 353 F.3d 691, 696 (defendants mischaracterization of Silva and Javor).

Although CITY and TCSD deny there is a duty to notify plaintiff this does not square with unauthorized negligent or intentional deprivation of property that require meaningful post-deprivation remedies. Hudson v. Palmer 468 v. 517, 533, 104 S.Ct. 3194 (1984)(procedural due process). Furthermore the record shows repeated request for records from City and TCSD that were delayed and denied until Kleinhammer I litigation. But there are current failures to answer questions (e.g. interrogatories). A plaintiff is denied meaningful access to court by covering up true facts surrounding.... Delew v. Wagner 143 F.3d 1219 (9th Cir. 1998). Access to files to prepare was denied to plaintiff during incarceration (those legal and physical disabilities CITY and TCSD were aware) regardless of Kleinhammer I litigation 1995-1997 in which documents showing equal protection violations were produced and claims settled in 1997 without post deprivation of property remedies to plaintiff.

It would have been impossible to prepare for litigation or exercise plaintiff's remedies without the particular records disclosed and the rest of records (e.g. 31 boxes). Equitable tolling operates to suspend or extend a statute of limitation as necessary to ensure fundamental practicality and fairness. Jones v. Blanas 393 F.2d 918, 928, (9th Cir, 2004)(e.g. unjust technical forfeiture). Plaintiff had been diligently pursuing his rights when some extra-ordinary circumstances stood in his way (legal and physical disabilities and inadequate law library). Pace v. Diguglielmo 544 U.S. 408, 418 (2005). If beyond a party's control to bring a claim, the limitation period is tolled until barriers is removed. Forti 672 F.Supp. 1550 fn. 13

FEAR FACTOR

Tolling may also be valid were circumstances of fear are present. Forti v. Suarez-Mason 672 F.Supp. 1531, 1550 n.3. The sequence of events leading to incarceration, conditions of confinement, and parole are not only ones that instill fear but also hampered litigation efforts. (Decl. R. Kleinhammer §7, 9, 14).

Plaintiff once providing notice of claim and intent to file suit was incarcerated under conditions of confinement with legal and physical disabilities that TCSD and CITY were aware and kept the massive files in anticipation of litigation upon plaintiff's release. Moreover the balancing test of loss to plaintiff being his home and 3 lots outweighs the alleged prejudice of defendants given the records of their conduct involving a 20 year grant, it appears more to be a position inconvenience rather than lack of full investigation of claims even upon the face of letter from City attorneys Roger Lyons and Roger Picquet. However a city councilman in 1997 blamed the judge for settlement (Exh. 23) for which plaintiff asked in interrogatories who the CITY found at fault for damages to Kleinhammer's TRACT 1679 but CITY failed to answer.

ARGUMENT II

EQUITABLE ESTOPPEL

Equitable estoppels holds that a party may be precluded from taking a position because of is affirmative misconduct. Leham v. U.S. 154 F.3d 1010, 1016-1017 (9th Cir. 1998); Santa Maria v. Pacific Bell 202 F.3d 1170, 1176 (9th Cir. 2000).

Once the CITY and TCSD (including Roger Piquet) took the position of litigation upon receipt of claims is stopped from now changing that position. Moreover one cannot justify or lull his adversary into a false sense of security, and thereby cause his adversary to subject his claim the bar of the statute of limitations ad then be permitted to plead the very delay caused by his course of conduct as a defense to the action when brought. Carruth v. Fritch (1950) 36 C.2d 426, 433.

The separate issue of butterfield case presented by the TCSD relates to negotiations of parties not claim presentation. However under the circumstances CITY and TCSD participated as an example in Nicholson-Brown, Inc. V. City of San Jose that city participation in negotiation to settle contractors claim for damages constituted an IMPLIED representation that city would not assert this section and stopped city from asserting this section and stopped the city from asserting this section (statute of limitations) would not be asserted. Nicholson-Brown, Inc v. City of San Jose (Cal. App. 1 Dist 1976) 62 Cal.App.3d 526, 534. So quite apart from claim presentation the negotiations for settlement for damages is evidence of an IMPLIED REPRESENTATION that the statute of limitations would not be raised for application of equitable estoppels if butterfield negotiations are at issue.

ARGUMENT III

JUDCIAL ESTOPPEL

Judicial estoppels prevents a party from asserting a position in a legal proceeding that is contrary to a position previously taken in the same or earlier proceeding. Lerner v. State Water Resources Control DB. Cases (Cal.App. 3 Dist 2006) 136 Cal.App.4th 674, 826-827;

The position taken by the CITY in Kleinhammer I was that Richard Kleinhammer was an important witness. Both TCSD and CITY took the position that TRACT 1679 42 U.S.C. § 1983 claims were sufficient for settlement. They also investigated the claims and kept the massive files e.g. 31

boxes. Further any appeal was waived as to the validity of claims when settled just prior to trial. City also took the position that a superior court lawsuit provided CITY and TCSD treated John and Richard Kleinhammer as one.

Thus CITY and TCSD may not take a contrary position in this litigation related to the same claims and Richard Kleinhammer as one.

I.

New Evidence

However the attempt to blacken plaintiff character in Kleinhammer I has been shown to be unreliable and undercut with the recantation of alleged victim, in 2006.

CONCLUSION

Plaintiff suffered from legal and physical disabilities during incarceration of which CITY and TCSD were aware. The claims in draft suit was a document submitted in motions during Kleinhammer I with numerous letters and testimony showing claim presentation for investigating claims which was conduct from 1993 to 1997 with reminders of same claims as his parents in the body of Kleinhammer I on page 5 1/13/95 complaint. With the massive record of claims investigated, settlement of Kleinhammer I and known disabilities equitable tolling is appropriate in this case where a civil rights action involves property rights (home and 3 lots) damaged by the conduct of CITY and TCSD. There is evidence of a genuine issue of material fact that TCSD and CITY were aware of the disabilities and expected litigation following plaintiff's release and kept the massive record used to defend against same claims in Kleinhammer I. There is also evidence that plaintiff suffered from fears not to sue while incarcerated particularly the survival aspect of incarceration (bit chunck of 4/12/2009) focusing on release by habeas corpus. Furthermore staff refused the records possession by plaintiff and he believed he could sue after release when provided cal Code of Civil procedures in 1996 and later, efforts were made to notify CITY and TCSD which plaintiff was informed including parents and state claims office.

There is evidence that CITY and TCSD were put on notice of claims which is conceded by the CITY, so that they should be barred from changing that position. The gap CITY and TCSD tried to make is that once notice was given we can say it is no good at a later time but they know plaintiff was under disabilities of incarceration with this type of case, not one related hair cut policy in prison but property rights abridged by CITY and TCSD. Moreover it would be unfair to force plaintiff to chose between habeas corpus petition and this action while imprisoned, where survival is the state of mind while incarcerated.

Plaintiff request the summary judgment be denied to defendants CITY and TCSD because there is a genuine issue of material fact that equitable tolling applies to the unusual circumstances of this case (31 boxes, small cell, and notification of claim and intent to sue with 1993-1997 investigation of claims)

I declare under the penalty of perjury under the laws of the United States of America the foregoing is true and correct to the best of my knowledge.

DATED: February 21, 2009 _____
s/Richard Kleinhammer
Pro per

DATED: February 25, 2009 _____
s/Craig M. Collins
Blum Collins LLP

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-55296
Central District of California,
Santa Ana

D.C. No. 8:06-cv-00798-JFW-JTL

RICHARD WILLIAM KLEINHAMMER,
pro se,

Plaintiff - Appellant,

versus.

CITY OF PASO ROBLES; et al.,

Defendants - Appellees.

ORDER

[Filed: August 03, 2010, By Molly C. Dewer, Clerk, Doc: 21]

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Kleinhammer's petition for panel rehearing and request for oral argument are denied.

No further filings shall be accepted in this closed case.

APPENDIX G

Case No. 09-55296

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

RICHARD KLEINHAMMER,

Plaintiff-Appellant-Petitioner

v.

CITY OF EL PASO DE ROBLES, JAMES APP, RICHARD RAMIREZ, RICHARD RAMIREZ, JERRY BANKSTON, ROGER PICQUET, TEMPLETON COMMUNITY SERVICES DISTRICT, AND BILL MILLER

Defendants-Appellees-Respondents

Appeal from the United States District Court
For the Central District of California
Case No. 06-0798JWF(JTLx)
The Honorable John F. Walter

PETITION FOR PANEL REHEARING

[Filed June 28, 2010 EFC by RWK Richard W Kleinhammer]

RICHARD KLEINHAMMER, Pro per
P.O. Box 97
Morro Bay, CA 93443
Phone: 805-801-1881

Richard Kleinhammer, Petitioner-appellant-plaintiff (INJURED PARTY) in the above entitled case, timely files a Fed R. App. 40 and 40-1 PETITION FOR PANEL REHEARING AND REQUEST ORAL ARGUMENTS following the Court's DENIAL of appeal filed on June 22, 2010.

Respondents-appellees-defendants (respondents) are City of Paso Robles, Jerry Bankston, Richard Ramirez, James App, and Roger Picquet (collectively CITY) and TEMPLETON Community Service District and Bill Miller (collectively TCSD). Appellants Opening Brief referred to as "AOB". The exhibits attached to the AOB referred to as "AOBx".

JURISDICTIONAL STATEMENT

This court has jurisdiction pursuant to Federal Rule of Federal Procedure 40.

STATEMENT OF THE CASE

This is a civil rights action for damages to real estate involving the CLEAN WATER ACT. This action was filed September 2006 and summary judgment grant to defendants in February 2008. INJURED PARTY Kleinhammer appealed which was denied June 22, 2010. This petition for rehearing is timely filed 6 days later on June 28, 2010.

PRELIMINARY STATEMENT

Injured party contends this court overlooked the tolling law theories raised on appeal and key con-tested and uncontroverted facts due to CITY and TCSD misrepresenting the actual appeal issues because the court relied general tolling theory rather than the specific theories raised on appeal.

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STATEMENT OF THE ISSUES

Those specific tolling theories are impracticability, apprehension of retaliation, sabotaged discovery, and the state law extend the statute of limitations. CITY and TCSD had notice of claims, were aware of the lack of access to court, investigated claims and kept the litigation records. Finally equitable estoppel to positions of being litigated without rejecting claims given the claim investigation and awareness of lack of access to court and settlement of TRACT 1679 claims. These specific tolling theories were the focus of the appeal.

STATEMENT OF FACTS

The applicable theories of law and facts that was overlooked includes:

1. INJURED PARTY was Actively Pursuing his Claims When Something Stood In His Way.

A. Notice of claims and were actively being pursued until: The record shows COUNT ONE (civil rights) and COUNT TWO (inverse condemnation) claim presentation was made in 1992 and 1993 by delivering a lawsuit (AOBx 1, 30 ¶ 86, INJURED PARTY as a plaintiff on page 1 in AOBx 1) and that the CITY and TCSD took the position of litigation with INJURED PARTY 1 . (AOBx 3, 4,5, 6, 30 ¶85-87) without denying claims. The above uncontro-verted facts are that CITY and TCSD had notice of claims and had several reminders. Thereafter CITY and TCSD investigated INJURED PARTY'S claims from 1993 through 1997 (AOBx 29 p. 15-16) which includes 1995-1997 investigation in related case number CV 95-0295AAH(JGX) (referred to as KLEINHAMMER I) including 20 depositions (AOBx 30 ¶93 and pages 21-26 names of those deposed). CITY and TCSD were again

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[1] There is 1993 written documentation and 1996 depositions admissions of the position of litigation and INJURED PARTY'S intent to sue plus settlement of KLEINHAMMER I same claims for $ 750,000.00 for 49 of the 52 lots.

reminded of INJURED PARTY'S separate interest2 on the face of parent's 1995 filed lawsuit KLEINHAMMER I (AOBx 15 p.5,) (also in deposition AOBx 8, 24) and that INJURED PARTY was incarcerated (AOBx 8 p. 404, AOBx 30 ¶107-108). City noted INJURED PARTY'S stark absence (AOBx 9) and even filed injured party's quitclaim deed showing ownership in TRACT 1679 acquired in 1986 (AOBx 16). CITY and TCSD kept the voluminous records 31 boxes (AOBx 11,12, 13, 30 ¶ 71) in anticipation of a lawsuit following INJURED PARTY'S release from incarceration without contacting INJURED PARTY or rejecting claims (AOBx 30 ¶ 108).

B. Something Stood In His Way Interfering With Access To Court (no records by law, impraticability, apprehension of retaliation, and discovery sabotage).

a. Impraticability - During incarceration from 1994 to November 2005 California Code of Regulations Title 15 § 3161 limited litigation records to 1 cubic foot (AOBx 10) (for an active case) which space was already taken up by criminal appeal and habeas corpus files (AOBx 30 ¶72). CDCR prison staff also refused plaintiff request to have litigation records to be mailed in (AOBx 30 ¶72) and there was a lack of physical space in a small two man cell (AOBx 28 p.4 line 12-14). CITY and TCD were aware and conceded there was a voluminous records ..and 31 boxes kept (AOBx 11, 13, AOBx 30¶ 71) and the uncontested fact that plaintiff was denied by prison staff access to all TRACT 1679 litigation records during incarceration (AOBx 30 ¶ 72) making it impracticable and unreasonable to prepare and litigate effectively while incarcerated (AOBx 30 ¶ 70,73). The INJURED PARTY'S TRACT 1679 home and land was loss (AOB p. 11).3

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2 Injured party's interest in 3 lots and a home (AOBx 1 p.1; 15 p.5;30 ¶110).

3 2009 settlement appraisal 1994 value was 325,00, present value of 880,000.

b. Apprehension of retaliation - In TRACT 1679 litigation4 CITY in 1996 filed motions seeking to place plaintiff conviction....spousal rape... at issue (AOBx 9, 30 ¶ 107) which caused apprehension of retaliation and is intimidation tactics. Sex offender papers being sent in would put plaintiff at risk of being attacked by other inmates if found out (AOBx 30 ¶77). Coupled with prison guards conduct to retaliate against inmates litigating was known to injured party (AOBx 30 ¶77). During this litigation interested party CDCR (parole staff) retaliated by re-incarcerating INJURED PARTY at the crucial discovery phase who was threatened with attack if he was a sex offender proving claim (AOBx 15, 31, 32).

c. Discovery sabotage - The court overlooked that discovery was closed prior to INJURED PARTY being able to conduct discovery. Interested party CDCR sabotaged the discovery phase on the eve of being subpoenaed by re-incarcerating injured party for 4 months for a technical violation, refusing to allow litigation records be mailed in5, made it physically impossible to conduct depositions, suddenly added new parole conditions which prohibited computer and west law use until injured party was released from parole (AOB page 14) which CITY and TCSD took advantage of. Interested party CDCR staffs' 2008 conduct is overwhelming proof of the lawsuit issues of denial of access to court during incarceration (AOBx 30 ¶ 77). Plaintiff's only initial discovery was interrogatories but CITY and TCSD refused to answer (AOB page 24). Without obtaining a release of liability CITY and TCSD was asked in interrogatories where they aware of any impediment to INJURED PARTY litigating, Did they anticipate suit following release from incarceration, why did they kept the litigation records, and did they investigate tolling of claims and advised etc...? It is uncontested that INTERESTED PARTY CDCR refused all records to INJURED PARTY for 4 months

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[4] In case number CV 95-0295 (tract 1679 litigation) plaintiff interest is described in the body of the 1995 lawsuit as owner of 3 lots and a house.

[5] Even with an active case CDCR staff refused to allow any litigation records to be sent in.

in 2008 until discovery closed obstructing the necessary motion to compel an answer to interrogatories. (AOBx 33)

C. NO PREJUDICE: Aware of impediment and investigated claims (kept record) so defendants cannot claim prejudice - CITY and TCSD investi-gated INJURDE PARTY'S claims (COUNT ONE and COUNT TWO) for years, were aware Title 15 ¶ 3161 prohibited possession of records as did limited physical space, and aware of plaintiff's claims and interest66 and kept the voluminous records (AOBx 11, 13, AOBx 30¶ 71) so that they cannot claim prejudice(AOB p. 9-11).

2. Equitable estoppel - CITY and TCSD took the position of litigation (AOBx 3, 4,5, 6 AOBx 30 ¶85-87) without denying claims. CITY and TCSD without ever notifying INJURED PARTY of a change in position (AOBx 30 ¶ 108) but now attempt to change their position that they did not expect a lawsuit after taking the contrary position of litigation with INJURED PARTY (AOBx 3, 4,5, 6, 30 ¶85-87). They never received a release nor any notice from INJURED PARTY other than he intended to file a lawsuit. Although one state tolling law changed without INJURED PARTY'S knowledge during incarceration it does not mean CITY and TCSD can change their position. INJURED PARTY believed that the intention to pursue his claims after release was also conveyed to during the 1995 to 1997 litigation(AOBx 8, 9, 11, 13, 14). Subsequently the only notice provided by CITY and TCSD was that they took a position of settlement for TRACT 1679 claims and paid damages in KLEINHAMMER I to other owners. CITY and TCSD only kept the voluminous records in anticipation of INJURED PARTY filing suit upon release. During this litigation in 2008 CITY and TCSD was aware that during that interested party CDCR engaged in active sabotaged INJURED PARTY'S discovery also precluded under equitable estoppel.

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[6] The 1995 lawsuit 95-0295AAH(JGX)at page 5 named INJURED PARTY'S separate interest (3 lots and home)and in 1996 deposition when INJURED PARTY was incarcerated (AOBx 15, p.5, AOBx 31 p.393) and QUITCLAIM DEED motion(AOBx 16)

3. Extended statute of limitations - The statute of limitations under CTCA Cal Gov Code 945.6(b) for COUNT TWO the state claim is extended during the entire time of incarceration. The Inverse condem-nation claim was presented to CITY and TCSD in 1992-1993 (AOBx 30 ¶ 85-87, AOBx 1 3, 4,5, 6) without denying claims and reminders in 1995 filed lawsuit and depositions as above described. Therefore once INJURED PARTY was incarcerated in 1994 the statute of limitation was extend during the entire time of incarceration from 1994 to November of 2005 (AOBx 30 ¶52) by state law, no tolling is needed.

SUMMARY OF ARGUMENTS

The District court and Court of Appeal overlooked the specific theories at issue by relying on imma-terial issues presented by CITY and TCSD. Most the facts are undisputed in INJURED PARTY'S favor related to specific claim tolling theories of appre-hension of retaliation, impracticability, CITY and TCSD awareness of incarceration impediment, that once investigated prejudice cannot be claimed, dis-covery sabotage, and equitable estoppel for active sabotage and positions taken. If the decision stands INJURED PARTY would lose everything.

STANDARDS OF REVIEW

a. Applying State tolling - A Federal court may borrow state rules for equitable tolling of the period from the forum state when not inconsistent with federal law. See Hardin v. Straub, 490 U.S. 536, 537-539, 109 S.Ct. 1998, 1999-2000, 104 L.Ed.2d 582 (1989); Harding v. Galceran, 889 F.2d 906, 907 (9th Cir.1989): Azer v. Connell 306 F.3d 930, 936 (9th Cir. 2002 . "Holmberg makes clear that equitable tolling does not require any conduct by the defendant. Holmberg v. Armbrecht 327 U.S.392, 397, 66 S.Ct. 582, 585 (1946); also see Stoll v Runyon 165 F.3d 138, 142 (9th Cir. 2001)(mental incompetence... tolling claims).

b. Equitable Tolling - A district court's decision whether to apply equitable estoppel or equitable tolling is reviewed for an abuse of discretion. Leong v. Potter, 347 F.3d 1117, 1121 (9th Cir. 2003); Johnson v. Henderson, 314 F.3d 409, 413 (9th Cir.

2002) (noting prior inconsistency). Whether a statute of limitations has been equitably tolled is generally reviewed for an abuse of discretion, unless facts are undisputed, in which case review is de novo. See Hensley v. United States, 531 F.3d 1052, 1056 (9th Cir. 2008); United States v. Battles, 362 F.3d 1195, 1196 (9th Cir. 2004) (habeas). The United states supreme court describes a litigant seeking equitable tolling to establishing two elements: (1) that he has been diligently pursuing his rights diligently, and (2) some extraordinary circumstances stood in his way." Pace v. DiGuglielmo 544 U.S. 408, 418, 125 S.Ct. 1807, 1814 (2005). INJURED PARTY specific theories of claim tolling include impraticability, fear, sabotage, notice and investigated claims, awareness of impediments, the voluminous records were kept, and equitable estoppel.

c. Discovery - The District court abused its discretion in making the decision to cut off discovery. Villegas-Valenzuela v. INS, 103 F.3d 805, 813 (9th Cir. 1996); Childress v. Darby Lumber, Inc. 357 F.3d 1000, 1009 (9th Cir. 2004).

d. Equitable Estoppel - A district's court's decision whether to apply equitable estoppels or equitable tolling is reviewed for an abuse of discretion. Leong v. Potter, 347 F.3d 1117, 1121 (9th Cir. 2003); Johnson v. Henderson, 314 F.3d 409, 413 (9th Cir. 2002)(noting prior inconsistency).

e. Standard For Motion For Summary Judgment - For summary judgment the opposing party must demonstrate that the fact in contention is material i.e. fact that might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986). A dispute is genuine, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Wool v. Tandem Computers, Inc. 818 F.2d 1433, 1436 (9th Cir. 1987).

ARGUMENT

I

INJURED PARTY WAS ACTIVELY PURSUING HIS CLAIMS AFTER PROVIDING NOTICE OF CLAIMS WHEN SOMETHING STOOD IN HIS WAY SO THAT CITY AND TCSD CANNOT CLAIM PREJUDICE

The United states supreme court describes a litigant seeking equitable tolling to establishing two elements: (1) that he has been diligently pursuing his rights diligently, and (2) some extraordinary circumstances stood in his way." Pace v. DiGuglielmo 544 U.S. 408, 418, 125 S.Ct. 1807, 1814 (2005).

1. INJURED PARTY was Actively Pursuing his claims when something stood in his way.

A. CITY And TCSD Had Notice Of Claims And Claims Were Actively Being Pursued until.

The limitation period in later suit may be tolled when a party's earlier suit was filed within the statutory period that put defendant's on notice of the party's claim. Cervantes v. City of S San Diego (9th Cir. 1993) 5 F.3d 1273, 1275, quoting Addison v. California (1978) 21 Cal.3d 313, 317. This key point is conceded by TCSD in Docket # 241 page 14 and 15 of the memorandum that they were put on notice of INJURED PARTY'S claims. Furthermore CITY and TCSD took the position of litigation (AOBx 3, 4,5, 6, 30 ¶85-87) while the CITY went so far as to file INJURED PARTY'S QUITCLAIM deed in KLEINHAMMER I (AOBx 16). CITY and TCSD unquestionably had notice of INJURED PARTY'S claims.

With subsequent diligent pursuit of claims until. Pace v. DiGuglielmo 544 U.S. at 418. It is uncontested that INJURED PARTY was pursuing his claim following the 1992 and 1993 claim presentation until incarcerated in 1994. The validity of claims were polarized by the 1995 lawsuit against CITY and TCSD for TRACT 1679 damages which were settled with other owners in 1997.

In an appropriate case a statute of limitations might be equitably tolled where only the second prerequisite was fulfilled. But it is difficult to imagine a situation where the defendant had a full opportunity to gather evidence relevant to the second claim unless the other two prerequisites also were satisfied" (Collier v. City of Pasadena 142 Cal.App.3d 917 924-925, fn5 191 Cal.Rptr. 681 685-686 (Cal app. 2nd dist 1983). The notice factor may be satisfied where a defendant in the second claim was alerted to the need to gather and preserve evidence by the first claim even if not nominally a party to that initial proceeding. Collier Id. at 928-929, 688-89. In Azer v. Connell the functional equivalent of filing would satisfied the notification purpose Azer v. Connell 306 F.3d 930 (9th cir 2002). In Azer v. Connell the key fact was the separate identity

from the corporation was not known while CITY and TCSD took a position of litigation with INJURED PARTY establishing they knew of the interest and claims. Moreover they investigated the same claims COUNT I AND COUNT II including deposition and kept the records.

B. SOMETHING STOOD IN HIS WAY

Some extraordinary circumstances stood in his way. Pace v. DiGuglielmo 544 U.S. 408, 418. INJURED PARTY'S incarceration stood in his way to pursue litigation from impracticability, apprehension of retaliation, and sabotage of discovery.

a. impraticability,

Both Federal and California law recognize equitable tolling in certain instances, as in the case of inability to bring suit or exercise one's remedy." (Bureerong v. Uvawas 922 F.Supp. 1450, 1463 (C.D. Cal. 1996) citing Lewis v. Superior Ct. 175 Cal.App.3d 366, 380, 220 Cal.Rptr. 594 (1985). Equitable tolling of the statute of limitations may be proper where "circumstances effectively render timely commencement of action impossible or virtually impossible. Id 372 or compliance is impossible. Id 380.

Impossibility means not only strict impossibility but also impracticability because of extreme and unreasonable difficulty, expense, injury or loss involved. Board of Supervisors v. Mcmahon 219 Cal.app.3d 286, 299-300, 268 Cal.Rptr. 219 225-226 (Cal.App. 3Dist 1990) citing Oosten v. Hay Haulers etc. Union (1955) 45 Cal.2d 784, 788, 291 P.2d 17.

It is uncontested that INJURE PARTY was denied all litigation records during the entire time of incarceration for tolling under impracticability. There was a loss of home and land to INJURED PARTY. The Ninth circuit has previously held that a complete lack of access to legal files may constitute an extraordinary circumstance, and that it is "unrealistic to expect a habeas petitioner to prepare and file a meaningful petition on his own within the limitations period without access to his legal file." Espinoza-Matthews v. California, 432 F.3d 1021, 1027-28 (9th Cir. 2005); Lott v. Mueller 304 F.3d 918, 925 (9th Cir. 2002). (denied access to his legal files). See Lewis v. Casey, 518 U.S. 343, 346, 116 S. Ct. 2174, 135 L. Ed.

2d 606 (1996) (quoting Bounds v. Smith, 430 U.S. 817, 828, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977)(ad-seg placement). Under the constitution a prolonged denial of access to personal legal materials could violate the constitution. Brown v. Ayers 72 Fed.Appx. 578, 580 (9th Cir. 2003). Access to information is protected under the United States constitution First Amendment. Pepperling v. Christ 678 F.2d 787 (9th Cir. 1982).

The court has overlooked the impracticability tolling theory (as defined by state law or alternate constitutional review). INJURED PARTY was denied access to all pursuant to law title 15, refused by staff, and lack of physical space (physical impossibility) much less the ability to conduct outside depositions in complex litigation. These are discernable facts to support the particular theory of impossibility and virtual impossibility tolling of claims for jury determination.

b. apprehension of retaliation

Equitable tolling applies to fear, such as fear of litigating while incarcerated. Equitable tolling is applicable due to fear of retaliation. (Ateeq v. Najor 15 Cal.App.4th 1351, 1356(Cal.App.4th Dist. 1993)(3 years duress forbearance…tolled the statute of limitation where threats were made to have the plaintiff's son arrested e.g estoppels). "Noting that the chilling effect of a threat on a prisoner's ability to petition the government for redress of grievances "lies not in any negative actions eventually taken, but in the apprehension it creates in the recipient of the threat." Brodheim v. Cry, 584 F. 3d 1262, 1271 (9th Cir. 2009).

The uncontested fact is that those fears alleged in the complaint were realized while plaintiff was on parole litigating in 2008 and interested party CDCR (parole staff) sabotaged discovery (by re incarcer-ating plaintiff for 4 months in 2008) subjecting INJURED PARTY to threats of violence if he was a sex offender. Furthermore CITY in 1996 filed motions in KLEINHAMMER I to include INJURED PARTY'S conviction for apprehension of retaliation e.g., if other inmates discovered plaintiff was a sex offender he would be attacked. CDCR prison staff had also instilled fear of retaliation as seen done to others litigating. This court overlooked the

facts that plaintiff had apprehension of retaliation7 if litigating while incarcerated for tolling of claims.

c. interference with discovery

The District court abused its discretion in making the decision to cut off discovery. See Villegas-Valenzuela v. INS, 103 F.3d 805, 813 (9th Cir. 1996).

Where the nonmoving party has not had the opportunity to discover information that is essential to his opposition, summary judgment must be denied. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 n. 5 (1986). INJURED PARTY in pro se during discovery phase was suddenly re-incarcerated (for 4 months) until after discovery had ended and refused access to litigation files to even file a motion to compel answers to interrogatories at the hands of interested party CDCR. This court must have overlooked these uncontroverted facts of discovery sabotage.

C. PREJUDICE IS ABSENT FOR TOLLING CLAIMS:

A Particular application is made when defendants are aware of the circumstances causing the lack of access to the courts, he is not prejudice by the tolling of the statue of limitations (Forti v. Suarez-Mason 672 F.Supp 1351, 1550 (N.D. Cal. 1987). Further-more, once investigated defendants are adequately protected from stale and deteriorated evidence. Daviton v. Columbia/HCA Healthcare Corp. 241 F.3d 1131, 1138-1139 (9th Cir. 2001). CITY and TCSD were at least aware that by law title 1588 prohibited possession of the litigation files to prepare or litigate during incarceration. Furthermore because the claims in COUNT ONE and COUNT TWO were investigated for years (1993-1997) including 20 deposition and CITY and TCSD kept those voluminous litigation files they cannot legitimately claim prejudice.

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[7] CITY and TCSD would stir up a fuss and put INJURED PARTY at risk of attack

[8] The 1 cubic foot of space was already taken up by appeals and habeas files.

ARGUMENT
II.

EQUITABLE ESTOPPEL PROTECTS AGAINST OF ACTIVE INTERFERENCE WITH DISCOVERY AND CHANGING OF POSITION TO REAP TACTI-CAL ADVANTAGE

Equitable estoppel, sometimes called fraudulent concealment, "focuses primarily on the actions taken by the defendant in preventing a plaintiff from filing suit.... [including] the plaintiff's actual and reason-able reliance on the defendant's conduct or represen-tations." Santa Maria v. Pac. Bell, 202 F.3d 1170, 1176 (9th Cir. 2000). Once CITY and TCSD took the position of litigation with INJURED PARTY they may not now claim that they changed that position without ever informing INJURED PARTY. Further-more INJURED PARTY had informed CITY and TCSD that he intended sue following claim presentation, thereafter they refused to discuss it. CITY and TCSD were reminded of INJURED PARTY'S interest during the 1995-1997 litigation and his incarceration making it impracticable for INJURED PARTY parti-cipate in litigation (title 15).

Equitable estoppels also extends to active conduct above and beyond the wrongdoing alleged for which claims are being filed. Guerrero v. Gates 442 F.3d 697 (9th Cir. 2006). In this case INTERESTED PARTY CDCR (staff) actively interfered with the discovery phase by re-incarcerating plaintiff at the crucial discovery phase and again denied possession all records, not even allowing one cubic foot to be mailed in. INJURED PARTY was prevented by INTEREST PARTY CDCR (staff) from conducting discovery for application of equitable estoppel during litigation of the instant case on the eve of their being subpoenaed.

ARGUMENT
III.

STATUE OF LIMITATIONS EXTENDS TO STATE CLAIMS DURING INCARCERATION

COUNT TWO State claim for Inverse condemnation - A particular statute of limitations under CTCA Cal Gov Code 945.6(b) provides for tolling during the entire time of incarceration. Plaintiff was incarcerated following claim presentation so that the statute of limitations was extended, no tolling is needed.

Cal Gov. Code 945.6 is a special statute of limitation. Lucchesi v. Bar O Boys Ranch (9th Cir. 2003) 353 F.3d 691, 696 (defendants mischaracter-ization of Silva and Javor). Plaintiff is entitled to tolling of state claim COUNT TWO inverse condemnation during incarceration. CITY and TCSD were expecting suit.

A ruling on the appropriate statute of limitations is a question of law reviewed de novo. Northwest Airlines, Inc. v. Camacho, 296 F.3d 787, 789 (9th Cir. 2002). The court overlooked the appropriate statute of limitations for COUNT TWO is provided in 945.6(b) extending the limitation period during incarceration.

CONCLUSION

INJURED PARTY is entitled to equitable tolling of ALL CLAIMS under the specific theories of impracticability, apprehension of fear, after notice of claims awareness of lack of access to court, discovery sabotage, equitable estoppel , Additionally COUNT TWO also has a distinct statute of limitations pursuant to 945.6(b). Each theory is supported by mostly uncontested facts in INJURED PARTY'S favor. Therefore whether clear error or de novo review the District Court misapprehended, overlooked, or made irrational determinations of fact and legal theories at issue for grant of the petition. This court can make a review under the abuse of discretion for contested facts and law. And a de novo review of uncontroverted facts and mixed questions of law and fact which will catch CITY and TCSD misleading tactics.

INJURED PARTY request the motion for Panel Rehearing be granted.

INJURED PARTY request this court hold that specific equitable claim tolling is applicable to the uncontroverted and contested facts or in the alternative reverse and remand for

discovery phase, review of facts at issue and review of specific theories of law by the District court.

I, Richard Kleinhammer, INJURED PARTY- petitioner in the above entitled action, declare under the penalty of perjury under the laws of the United
States of America that the above statement of facts and laws are true and correct.

Dated: June 28, 2010

__/s/_Richard Kleinhammer _____
Richard Kleinhammer,
Petitioner In Pro Per

APPENDIX H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. SA CV 06-798-JFW (JTLx)
Dated: December 22, 2008

Title: Richard Kleinhammer -v- City of Paso Robles, etc., et al.

PRESENT: HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	Sheri Kleeger
Courtroom Deputy	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
Craig M. Collins
ATTORNEYS PRESENT FOR DEFENDANTS:
Iris Ping Yang
Kimberly E. Hood
Ziyad Ibrahim Naccasha
Michael M. McMahon

PROCEEDINGS: SCHEDULING CONFERENCE

Scheduling Conference held. ADR-12 is signed and filed. Court ordered the dates as indicated on Scheduling and Case Management Order filed today. Counsel served with Scheduling and Case Management Order on this date.

Plaintiff's counsel is directed to file a status report as discussed on the record no later than January 12, 2009 re: 1983 claims.

For the reasons stated on the record, the Court DENIES Plaintiff's Ex Parte Application to Continue All Deadlines and Trial Date, or in the Alternative to Continue December 2, 2008 Deposition of Plaintiff [lodged 12/1/08, fld 12/8/08].

Initials of Deputy Clerk sr
0/15

APPENDIX I

BLUM COLLINS LLP
THE AON CENTER
707 WILSHIRE BLVD.
SUITE 4880
LOS ANGELES, CA 90017
TELEPHONE (213) 572-0400
FAX (213) 572-0401
Email: collins@blumcollins.com
CRAIG M. COLLINS, BAR NO. 151582
Attorney for Plaintiff Richard Kleinhammer

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD KLEINHAMMER, Plaintiff,
vs.
CITY OF PASO ROBLES, et al., Defendants

Filed DECEMBER 8, 2008, AT 830 Case No. SACV 06-0798-JFW (JTL)

PLAINTIFF RICHARD KLEINHAMMER'S APPLICATION TO CONTINUE ALL
DEADLINES AND TRIAL DATE, OR
IN THE ALTERNATIVE TO CONTINUE DECEMBER 2, 2008 DEPOSITION OF PLAINTIFF; AND
DECLARATIONS OF CRAIG M. COLLINS AND JOHN KLEINHAMMER.

Kleinhammer v. City of Paso Robles, et al. Plaintiff's Ex Parte Application to Continue Deadlines

Case No. CV 06-0798 JFW (JTL)

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Plaintiff Richard Kleinhammer hereby moves ex parte to continue all deadlines and trial date for 120 days, or in the alternative to continue the date of Plaintiff's scheduled December 2, 2008 deposition until Wasco Prison officials (who have custody of plaintiff) will allow Plaintiff's counsel to attend his deposition.

This motion is made on the grounds that:

• Plaintiff Richard Kleinhammer has been unable to afford counsel to represent him in this matter (and has unsuccessfully attempted to obtain counsel to represent him on a contingent fee basis), and through no fault of his own has been forced to represent himself in pro se in this matter up until now (Decl. J. Kleinhammer hereto, ¶¶ 15-17);

• Plaintiff has now located and for the first time been able to make arrangements for counsel, who is Craig M. Collins of Blum Collins LLP, to represent him in this matter (Decl. Collins hereto, ¶ 2);

• Plaintiff was able to retain counsel on November 26, 2008, and his counsel intends to file a Notice of Substitution of Counsel with the Court on the next business day after being retained, i.e., December 1, 2008 (Decl. Collins hereto, ¶ 2);

• Plaintiff's counsel tried immediately upon being retained to contact Wasco Prison officials, who have Plaintiff in custody, to make the necessary arrangements to meet with Plaintiff about the case and to attend his deposition as scheduled on December 2, 2008, but Wasco Prison official Brian Kibler stated that Plaintiff's counsel would be allowed neither to meet with Plaintiff nor to attend Plaintiff's deposition until Wasco Prison officials completed the necessary background check on Plaintiff's counsel, which would not occur by December 2, 2008 (despite that Plaintiff's counsel immediately filled out and returned on November 26, 2008 the necessary forms for the clearance process to begin) (Decl. Collins hereto, ¶ 3);

• Although Wasco Prison official Brian Kibler informed Plaintiff's counsel on November 26, 2008 that there is no deposition of Plaintiff scheduled for December 2, 2008 (and further informed Plaintiff's counsel that he had informed a woman attorney on the case, whose name he could not recall, of this fact), nonetheless Defendants' counsel Iris Yang and Michael McMahon contend that the Plaintiff will be deposed on December 2, 2008 (Decl. Collins, ¶ 4);

• Plaintiff's counsel is informed and believes that Defendants' counsel intends to travel to Wasco Prison on December 2, 2008 for the purpose of taking Plaintiff's deposition (Decl. Collins, ¶ 4);

• Unless this Court grants the relief requested in this ex parte application, Plaintiff's counsel will not be allowed to attend Plaintiff's December 2, 2008 deposition. (Decl. Collins hereto, ¶ 3) Defendants' counsel have been informed that Plaintiff is now represented by counsel, and yet they intend to take the deposition of Plaintiff, whom they know to be represented by

counsel, in the absence of Plaintiff's counsel anyway (in violation of the California Rule of Professional Conduct 2-100, which prohibits direct contact by an attorney with an opposing party whom the attorney knows is represented by counsel);

• Even if Plaintiff's counsel were able to meet with Plaintiff in prison, it would extremely difficult for Plaintiff's counsel to adequately represent Plaintiff in this matter because visits are limited to one hour per day, Plaintiff counsel's travel time to and from Wasco, California likely would be four hours or more, and Plaintiff's counsel and Plaintiff can only speak to each other through glass and cannot exchange documents for review (Decl. Collins hereto, ¶ 5);

• Without a continuance of the trial date and related deadlines, Plaintiff Kleinhammer's counsel will have no opportunity to serve written interrogatories, requests for production, or requests for admission. The Court's Order re: Further Proceedings, dated May 21, 2008, orders that all such discovery must be served at least 45 calendar days prior to the December 21, 2008 discovery cut-off, which means the last day to serve any such discovery has already passed. (Court's Order re: Further Proceedings, dated May 21, 2008, at p. 2, ll. 13-21);

• Without a continuance of the trial date and related deadlines, Plaintiff Kleinhammer's counsel will have no meaningful opportunity to conduct depositions. The Court's Order re: Further Proceedings, dated May 21, 2008, orders that depositions must be set for at least five court days before the discovery cut-off (which means by December 15, 2008) and deposition notices must be served no later than 14 calendar days before the deposition (which means by December 1,

2008 – i.e., today). (Court's Order re: Further Proceedings, dated May 21, 2008, at p. 2, ll. 9-12.);

• Plaintiff is scheduled to be released on December 24, 2008 (Exh. B hereto). He is not scheduled to remain in custody until next year as Defendants' counsel previously misinformed the Court when opposing Plaintiff's request for a short delay. (See Opposition of Defendants Templeton Community Services District and Bill Miller to Plaintiff's Motion for Protective Order, filed November 18, 2008, at p. 14, ll. 1-2). Once released, he will be fully available to attend his deposition, assist his counsel in preparing for trial, and otherwise to bring this matter to a prompt conclusion;

• The Defendants, who conducted no discovery for nearly two years after this case was filed (this case was filed August 24, 2006, and Defendants filed their Rule 26(f) Report on June 13, 2008 admitting "[n]o discovery has been conducted[.]"),would not be prejudiced by a 120-day continuance of all deadlines in the case;

• Plaintiff, who was incarcerated only for a short period of four months' duration during the entire approximately 30 months that this case has been pending, would be extremely prejudiced if the Court were to allow the Defendants to cram all of their discovery into that short, four-month period during which they know that Plaintiff is indisposed and handicapped in his ability to respond. That would not only be unfair and an obvious attempt to subvert the interests of justice, but it would be an effort to punish Plaintiff in this civil proceeding in addition to his criminal punishment, which would violate the constitutional prohibition on double jeopardy; and

• Plaintiff would be extremely prejudiced in this matter unless the Court continues the trial date, discovery cut-off, and all related deadlines for at least 120 days.

The current set deadlines in the case, as extracted from the Court's Order re Further Proceedings in Civil Rights Action and Setting of Cut-Off Dates, filed Ma 21, 2008, in the Court's file are:

October 21, 2008 – Last day to serve Doe defendants
November 5, 2008 – Last day to serve interroga-tories, request for production, or request for admission
December 1, 2008–Last day to serve deposition notice
December 14, 2008 -Last day to commence deposition
December 21, 2008– Discovery completion date
December 31, 2008– Last day to serve dispositive motions

In the short time since being retained on November 26, 2008, Plaintiffs counsel had been unable to deter-mine whether the Court had set a trial date in this case.

Pursuant to Local Rule 7□19.1, all parties have been properly notified of this ex parte application.

Pursuant to Local Rule 7□19, Plaintiff's counsel provides the following information for the Court concerning Opposing Counsel:

Carmel & Naccasha LLP
Ziyad I. Naccasha
Michael M. McMahon
1410 Marsh Street
San Luis Obispo, CA 93401
Telephone: (805) 546□8785
Fax: (805) 546□8015
Email: znacassha@carnalaw.com

mmcmahon@carnaclaw.com
Iris P. Yang
Kimberly Hood
McDonough, Holland & Allen PC
555 Capitol Mall, 9th Floor
Sacramento, CA 95814□4692
Telephone: (916) 444□3900
Fax: (916) 444□8334
Email: iyang@mhalaw.com
khood@mhalaw.com

This ex parte application will be supported by this application, the declarations of Craig M. Collins and John Kleinhammer served and filed herewith and exhibits, the Memorandum of Points and Authorities served and filed herewith, the complete files and records of this action, and such other matters as the Court may properly consider.

BLUM|COLLINS LLP
s/Craig M. Collins
CRAIG M. COLLINS
Attorneys for Plaintiff

DECLARATION OF CRAIG M. COLLINS

Craig M. Collins declares:

1. I am an attorney at law, duly admitted to practice law before all courts of the State of California and before the United States District Court for the Central District of California. I have personal knowledge of all of the facts set forth in this declaration, and if called and sworn as a witness at any proceeding, I could and would competently testify as set forth herein.

Plaintiff Richard Kleinhammer has Retained me as Counsel in This Action on November 26, 2008

2. On November 26, 2008, I was retained on behalf of Plaintiff Richard Kleinhammer to represent him in this action. On December 1, 2008, when the Court opens, I intend to file a Substitution of Attorney. I was unable to file it on November 26, 2008 because I could not both complete it, and obtain the necessary signatures on the accompanying declarations, before the Court closed for the day. I was unable to file it from November 27 through 30, 2008 because the Court was not open for business on those days. I thought the Court might be open for business on November 28, 2008, and went to the courthouse on Spring Street for the purpose of filing it, but was informed by a security guard apparently working for the Court that the building was closed to public access. I could not electronically file the document because, although I have completed all the necessary online training, the Court has not yet sent me the necessary logon information.

Immediately After Being Retained, I Attempted to Make Arrangements to Attend Plaintiff Richard Kleinhammer's December 2, 2008 Deposition

3. Plaintiff Richard Kleinhammer was incarcerated in Wasco State Prison in August 2008 for a period of four months. He is still incarcerated there today. Immediately after being retained to represent him on November 26, 2008, I contacted Wasco State Prison to make arrangements to meet with Plaintiff about the case and to attend his deposition as scheduled on December 2, 2008. Wasco Prison official Brian Kibler told me that I would be allowed neither to meet with Plaintiff nor to attend Plaintiff's deposition until Wasco Prison officials completed the necessary background check on me, which would not occur by December 2, 2008, despite that I immediately filled out and returned on November 26, 2008 the necessary forms for the clearance process to begin.

4. Although Wasco Prison official Brian Kibler informed me on November 26, 2008 that there is no deposition of Plaintiff scheduled for December 2, 2008 (and further informed Plaintiff's counsel that he had informed a woman attorney on the case, whose name he could not recall, of this fact), nonetheless Defendants' counsel Iris Yang and Michael McMahon contend that the Plaintiff will be deposed on December 2, 2008. I am informed and believe that Defendants' counsel intend to travel to Wasco Prison on December 2, 2008 for the purpose of taking Plaintiff's deposition.

5. Even if I were able to meet with Plaintiff in prison, it would extremely difficult for me to adequately represent Plaintiff in this matter. Wasco State Prison officials have informed me that my visits there would be limited to one hour per day, and that

Plaintiff and I would be allowed only speak to each other through glass and could not exchange documents for review. Wasco State Prison is located several hours drive from my office in Los Angeles. If I were, for example, to need to meet with my client for a total of eight hours, I would need to travel eight times to Wasco, California, which would consume a total of 40 hours of my time. In other words, while Plaintiff remains incarcerated, I would need to spend the equivalent of an entire work week of time to meet with my client for one business day.

6. Since 1991, my practice has been principally devoted to representing clients in real-estate related litigation similar to the Plaintiff's claims in this lawsuit. From my experience, I know that a crucial part of the pre-trial preparation process involves lengthy and repeated in-person meetings between me and my client in the same room with the potentially relevant documents in the case (which I am informed and believe in this case include dozens of boxes).

7. Without that kind of simultaneous access to my client and his documents in an in-person meeting, I believe it will be very difficult to adequately prepare this case for trial (and will give an advantage, not based on the merits of the litigation, to the defendants who are free to meet in person as often and for as long as they wish in preparation for trial). It is an important part o the pre-trial preparation process in a case of this type for my client to pull documents from boxes either according to his own recollection or in response to my questions, for me to be able to direct his attention to portions of those documents, and then for us to discuss the issues in the case together.

this case with such a large collection of documents on the schedule previously set by the Court. This is why I have requested a 120-dy continuance of the trial date and all related deadlines in this action.

EXHIBITS

9. A true copy of my November 26, 2008 letter to Defendants' counsel is attached hereto as Exhibit A.

10. A true copy of a written response from Wasco State Prison officials to my client Richard Kleinhammer's inquiry about his release date is attached hereto as Exhibit B.

11. Defendants' attorney Michael McMahon's November 26, 2008 email responding both to my efforts to meet and confer with him and my notifying him that I would be seeking ex parte relief from the Court is attached hereto as Exhibit C.

12. Defendants' attorney Iris Yang's November 28, 2008 email responding both to my efforts to meet and confer with her and my notifying her that I would be seeking ex parte relief from the Court is attached hereto as Exhibit D.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed November 30, 2008 at Los Angeles, California.

CRAIG M. COLLINS

DECLARATION OF JOHN KLEINHAMMER

I, John Kleinhammer, declare as follows:

13. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I would and could testify competently to those facts.

14. I am the father of the plaintiff in this action, Richard Kleinhammer. I Searched for Counsel to Represent Plaintiff Richard Kleinhammer and Retained Counsel for him on November 26, 2008

15. Richard Kleinhammer was incarcerated in August 2008 for a period of four months, and still is incarcerated. This four-month period of time is the only portion of the approximately 30 months that this case has been pending since August 2006 that Richard Kleinhammer has been incarcerated.

16. I am familiar with the financial condition of my son, Plaintiff Richard Kleinhammer, and I know that he was financially unable to retain counsel on a time-fee basis to represent him in this action. I assisted him with efforts to locate and obtain counsel on a contingent-fee basis. We contacted attorneys to discuss this prospect, but were unable to locate an attorney who would represent him in this action on that basis.

17. Thus, up until now, Plaintiff Richard Kleinhammer has been forced by his financial circumstances to represent himself in this action. Now, however, I have agreed to lend a certain amount of money to Richard Kleinhammer so that he can retain counsel in this action.

18. On or about November 4, 2008, Richard Kleinhammer gave me a written power of attorney in fact authorizing me to obtain counsel to represent him in this action.

19. I searched diligently for counsel to represent Richard Kleinhammer since November 4, 2008. I was unable to find an attorney until November 26, 2008. On November 26, 2008, attorney Craig M. Collins of the Blum Collins LLP law firm agreed to substitute into this action as Plaintiff Richard Kleinhammer's counsel of record.

20. Thus, I retained Mr. Collins on Plaintiff Richard Kleinhammer's behalf for this litigation, pursuant to the power of attorney previously given to me, on November 26, 2008.

21. My son mailed to me what he explained to me was a copy of a response from Wasco State Prison officials to his inquiry about when he would be released. Exhibit B hereto is a true copy of the response that my son received from Wasco State Prison officials and then forwarded to me.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct. This declaration was executed November 30, 2008, at Cayucos, California.

JOHN KLEINHAMMER

INDEX OF EXHIBITS

Exhibit

Description

Page No.

A Craig M. Collins' November 26, 2008 letter re ex parte application

B Written response from Wasco State Prison officials Plaintiff Richard Kleinhammer's inquiry about his release date

C Michael McMahon's November 26, 2008 email

D Iris Yang's November 28, 2008 email

PROOF OF SERVICE

STATE OF CALIFORNIA)) ss.

COUNTY OF LOS ANGELES)

I am over the age of 18 and not a party to the above entitled action; my business address is 707 Wilshire Boulevard, Suite 4880, Los Angeles, California 90017. I am familiar with my business's practice of processing mail.

On December 1, 2008, I served the within PLAINTIFF RICHARD KLEINHAMMER'S EX PARTE APPLICATION TO CONTINUE ALL DEADLINES AND TRIAL DATE, OR IN THE ALTERNATIVE TO CONTINUE DECEMBER 2, 2008 DEPOSITION OF PLAINTIFF; AND DECLARATIONS OF CRAIG M. COLLINS AND JOHN KLEINHAMMER on the interested parties in this action by placing a true copy thereof in envelopes which were sealed, with postage thereon fully prepaid, for mailing with the United States Postal Service that same day at Los Angeles, California in the ordinary course of business.

The envelopes were addressed as follows:

Carmel & Naccasha LLP
Ziyad I. Naccasha
Michael M. McMahon
1410 Marsh Street
San Luis Obispo, CA 93401
Telephone: (805) 546-8785
Fax: (805) 546-8015
Email: znaccasha@carnaclaw.com
mmcmahon@carnaclaw.com
Iris P. Yang
Kimberly Hood

McDonough, Holland & Allen PC
555 Capitol Mall, 9th Floor
Sacramento, CA 95814-4692
Telephone: (916) 444-3900
Fax: (916) 444-8334
Email: iyang@mhalaw.com

Kleinhammer v. City of Paso Robles, et al. Plaintiff's Ex Parte Application to Continue Deadlines

Case No. CV 06-0798 JFW (JTL) Page 22

khood@mhalaw.com

In addition to service by mail as set forth above, a copy of said documents were also delivered by facsimile transmission to the addressees above on November 30, 2008.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed December 1, 2008 at Los Angeles, California.

s/ Craig M. Collins

APPENDIX J

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 06-0798-JFW(JTL)

Date November 13, 2008

Title RICHARD KLEINHAMMER v. CITY OF PASO ROBLES, ET AL.

Present: The Honorable Jennifer T. Lum, United States Magistrate Judge

ShaRon Anthony

Deputy Clerk Court Reporter / Recorder Tape No.

Attorneys Present for Plaintiffs:
None Present
Attorneys Present for Defendants:
None Present

Proceedings: (IN CHAMBERS) ORDER DENYING PLAINTIFF'S MOTION FOR EXTENSION OF TIME (150) DAYS

On November 4, 2008, plaintiff filed a Motion for Extension of Time (150 Days) ("Motion"). Defend-ants filed an Opposition to plaintiff's Motion on November 10, 2008. Having reviewed and considered the pleadings in this matter, the Court finds this matter is suitable for decision without oral argument. See Local Rule 7-15 and Fed. R. Civ. P.
78(b). Therefore, the hearing on this matter is taken off calendar and the Court issues the following ruling:

In his Motion, plaintiff fails to state for what specific purpose he seeks an extension of time. Plaintiff states that he has

insufficient access to the law library and is unable to comply with the different filing deadlines facing him in two cases that he has
filed in this Court. But plaintiff's complaints are general and he does not request an extension of time to file a particular pleading. Accordingly, plaintiff's Motion is DENIED. To the extent plaintiff is requesting the Court to stay the case for 150 days,
plaintiff's request is also DENIED for lack of good cause.

cc: Parties

Initials of Deputy Clerk sa_____

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

APPENDIX K

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
WESTERN DIVISION

D.C. No. 8:06-cv-00798-JFW-JTL

RICHARD KLEINHAMMER,

Plaintiff - Appellant,

versus.

CITY OF PASO ROBLES; et al.,

Defendants - Appellees.

PLAINTIFF RICHARD KLEINHAMMER'S MOTION FOR EXTENSION OF TIME (of 150 days);
MEMORANDUM OF POINTS AND AUTHORITIES
Date: November 25, 2008
Time: 10 A.M.

United States District Court
for the Central District of California
Jennifer T. Lum, Magistrate Judge

[Filed: November 4, 20090, By sa, Sheron Anthony, Clerk, Doc: 208]

To all defendants, please take notice of hearing date of November 25, 2008 At 312 N. Spring. St., Los Angles, in front of Honorable Jennifer T. Lum Magistrate Judge for Plaintiff's extension of time (150 days until March 5, 2009)

Plaintiff request the court grand a 150 day extension of time up to and including March 15, 2008 for the following reasons:

A. Due to physical impossibility of Plaintiff's'

1) does not have possession or access to legal files during incarceration,

2) is unable to produce documents requested

3) or use for preparation of motions, interrogatories, depositions State impediment to attending depositions of defendants or person until released from incarceration to dispose cross-examine, object or present evidence. Release may not occur until late December 2008 and discharge in March despite denial of charges.

B. Due to limited access to law library being 1/1/2 hours every three weeks and workload of two cases CV 06-0798 and CV 083843 in pro per does not have neough time to reaserch the multitude of motions for example 1) opposition to Attorney General Motion to dismiss, 2) opposition to Department of Corrections motion to dismiss, 3) motion for extension of time in both cases, 4) opposition to Templeton defendants Motion to unfairly conduct disposition 5) protective order on issues and persons including plaintiff in pro se and family 6) temporary restraining order against Carmel and Nacassha, Micheal McMahon and Ziyad Nacassha as well as CDCR defendants 7) document subpoena's 8) interrogatories and many more. Further the law library does not have basic forms such as a) subpoena's b) interrogatories; c) appointment of counsel or d) extension of time to expedite research and filing these motions.

C. Templeton Defendants request a 90-day extension although the motion is one sided to take advantage of plaintiff incarceration if allowed to conduct deposition prior to plaintiffs release from incarceration and parole.

Damages to plaintiff home and land in the instant civil rights action patterned after parents suit which was settled for $750,000. Interested party CDCR has caused unnecessary delays in seeking to destroy evidence against them. Plaintiff will not have access to a phone until after release from incarceration to even call family. (due to prison over crowding, design etc.)

I. MEMORANDUM OF POINTS AND AUTHORITIES

A. Extension of time (150 Days)

1) under FEd. R. Civ P 6 (b) an extension of time may be granted because of excusable neglect. Plaintiff is entitled an extension of time under excusable neglect during incarceration and until off parole bacuse of intermeddling CDCR escalating inteference and inaccessible files.

2) Under Equitable tolling the existing conditions of confinement render it physically impossible to continue litigation by circumstances beyond plaintiffs control examples;

access to legal files, phone, attending deposition and presenting case presently cannot be done, permitting the 150 extension of time. See Lott v. Mueller, Erwin, Aududon Society; Pacific Bell Federal Cases.

3) Under the 1st, 5, 6, 14 Amendment Constitutional rights due process and right to obtain and present evidence will be denied at a crucial point in litigation. Plaintiff in pro se until released will be unable to access his (300 plus documents) evidence or investigate (deposition-discovery) by interrogatories or subpoena that are not available at the Wasco Reception Prison Library. Plaintiff has a constitutional right to address court and due process, to preparation, present evidence, examine witnesses and obtain evidence at the crucial discovery stage e.g. discovery -summary judgment.

4) Under equitable estoppel an opposing party or a person's conduct that causes delay in litigation may be grounds for summary judgment or excuse the delayed plaintiff. In this case Interested party CDCR as named in complaint has created an impediment to pursuing this litigation, E.g. incarcerated plaintiff.

CONCLUSION

It would be unfair to permit Templeton or defendants to conduct deposition or continue with subpoena's while plaintiff is incarcerated and unable to adequately respond, object or attend depositions. Plaintiff confinement at the hands of interested party CDCR is beyond his control and otherwise are defendants in separate case. Plaintiff request the court grant a 150-day extension of time including March 15, 2009.

I declare under the penalty of perjury under the laws of the United States of America the foregoing is true and correct.

DATE: November 03, 2008

/s/_____
Richard Kleinhammer
proper

APPENDIX L (complaint exhibits)

EXHIBIT 1 – CITY September 14 & 15, 1995 Nichols letter
EXHIBIT 2 – CITY February 23, 1993 Richard Ramirez Letter
EXHIBIT 3 – CITY February 12 1993 Richard Ramirez letter
EXHIBIT 4 – 1992 DRAFT LAWSUIT
EXHIBIT 5 – CITY April 29, 1993 Roger Piquet letter
EXHIBIT 6 – January 13, 1995 Kleinhammer TR 1679 suit Case No 95- 0295AAH(JGX)
EXHIBIT 7 – photo of files
EXHIBIT 8 – May 1996 deposition of John Kleinhammer
EXHIBIT 9 – DISTRICT June 19, 1996 deposition of William Van Orden
EXHIBIT 10 – CITY May 3, 1996 deposition of Richard Ramirez
EXHIBIT 11 – DISTRICT February 10, 2006 Stephen Kronick letter
EXHIBIT 12 – CITY February 21, 2006 Iris Yang letter
EXHIBIT 13 – TRACT 1679 map
EXHIBIT 14 – August 12, 1993 Richard Kleinhammer letter to grand Jury
EXHIBIT 15 – July 8, 1991 and February 9, 1993 Richard Kleinhammer ltr City
EXHIBIT 16 – DISRICT August 30, 1989 William Miller to Kleinhammer
EXHIBIT 17 – Title 15
EXHIBIT 18 – 1997 SETTLEMENT CHECK 500K CITY 250 DIST. & AGREEMENT
EXHIBIT 19 – May 22, 1995 judgment/order valid 42 usc 1983 claim and (see exhibit 4)
EXHIBIT 20 – legal description of land

EXHIBIT 21 –August 20, 1995 Ray Gallo Stipulation exhibits 95-0295AAH(JGX)
EXHIBIT 22 – CITY February 12, 1993 Richard Ramirez letter
EXHIBIT 23 – CITY September 23, 1996 Richard Nichols Judicial Notice Quitclaim Deed spousal rape conviction
EXHIBIT 24 – CITY Feb 23, 1993 Ramirez letter to Kleinhammer & Oct 22, 2006 proof of service First amended complaint
EXHIBIT 25 - October 17, 2006 state government tort claim denied
EXHIBIT 26 – CITY May 25, 1989 Roger Lyon letter to Scott Slater
EXHIBIT 27 – May 12, 1989 Scott Slater letter to Roger Lyon
EXHIBIT 28 – CITY September 8, 1989 Roger Lyon Grant violations letter to SWRCB
EXHIBIT 29 – CITY July 22, 1992 Richard Ramirez Letter to Bob Berman TCSD
EXHIBIT 30 - May 27, 1993 John Kleinhammer letter to Roger Piquet failure to provide documents
EXHIBIT 31 July 1, 1988 CITY Micheal Lesage Templeton Interceptor policy
EXHIBIT 32 August 5, 1988 CITY Micheal Lesage Templeton Interceptor 1023
EXHIBIT 33 CITY July 31, 1989 Mike Granthom letter to Roger Lyon
EXHIBIT 34 April 27, 1993 John Kleinhammer to Roger Piquet
EXHIBIT 35 CITY August 15, 1989 agenda city
EXHIBIT 36 CITY September 1989 agenda City
EXHIBIT 37 DISTRICT October 17, 1989 District Manager request City approve Kleinhammer connection

APPENDIX M

EXHIBIT 38 City November 15, 1985 Director of Municipal services to LAFCO
EXHIBIT 39 November 11, 1986 Kleinhammer request to City for will serve letter
EXHIBIT 40 December 11, 1986 City response Sewer service proposed 120 lot
EXHIBIT 41 BILL MILLER Deposition connection
EXHIBIT 42 July 29, 1991 Roger Lyon DRAFT Kleinhammer CONNECTION (separate review of October 1990 addendum to interceptor)
EXHIBIT 43 January 31, 1992 James App to Richard Ramirez history
EXHIBIT 44 August 10 1991 City Mayor Iverson to District Dargan reject offer to purchase interceptor to 46.
EXHIBIT 45 May 18, 1992, November 1993, December 1992 letter between District Manager Van Order and City Manager Ramirez Negotiate
EXHIBIT 46 MAP of INTERCEPTOR LINE
EXHIBIT 47 July 15, 1991 District Dargan to City Kleinhammer CONNECTION
EXHIBIT48 April 22, 1991 Jerry Bankston to Kleinhammer refer you Back to City attorney Lyon's, May 1989 letter for connection to interceptor
EXHIBIT 49 July 8, 1988 November 14, 1988 Attorney Bonnheim - Bunnell
EXHIBIT 50 January 1989 Miller Dist. Manager to City Manager telling a FEW

APPENDIX M

361	8/x/1971	Report To City of Paso Robles on Paso Robles-Templeton Interceptor prepared by John Carollo Engineers (7 pages) *MAP & location of mobile homes immediately adjacent to Kleinhammer's
362	9/06/1972	Letter City to EPA * mobile homes
363	2/09/1993	MAP reasonable connection point Kleinhammer Tract 1679
364	2/09/1993	MAP reasonable connection point Kleinhammer Tract 1679 BLOWN UP
365	11/07/1972	Letter to EPA from John Carollo Engineers (Harvey Hunt) (3 pages) (* intervening Land p1 cost little..larger pipe ..opposed to parallel p 2)
366	9/05/1972	Letter to SWRCB from John Carollo Engineers (Harvey Hunt) request reconsideration (1.1725 mgd) (4 pages)* between p1 mobile home p3
367	Areal Map	Areal Map showing Mobile Homes, Next to Bonita Home/Country Oaks Tract 927, and next to Kleinhammer Tract 1679
368	Map	Map showing intermediate area and Templeton with location of Mobile homes
368	9/1995	Foreclosure of Richard Kleinhammer's home and land
369	1/13/1995	COMPLAINT case #95-0295AAH(JGX) filed in Federal District Court by Plaintiff's Parents against City of Paso Robles and Templeton Community Services District, page 5 describes small parcel of land owned by their son (13 pages)
370	2/23/1993	Letter to Richard Kleinhammer from Richard Ramirez, regarding: this item is being litigated, cc Roger Piquet & City

371	8/20/1995	Ray Gallo stipulation to exhibits in case number #95-0295AAH(JGX)
372	1997	Copy of settlement check for 49 of 52 lots
373	2000	State Tort claims denied
374	5/09/1996	Deposition of John Kleinhammer pages 391-395
375	2/12/1993	Richard Kleinhammer notes that both Candy Aschele and Jim App indicate must go through attorney for documents after filing Draft Lawsuit with City.
376	2/23/1993	Letter to Richard Kleinhammer from Richard Ramirez, regarding: this item is being litigated, cc Roger Piquet & City council
377	5/03/1996	Deposition of Richard Ramirez pages 53-54
378	2/25/1993	Letter to John McCarthy, city Engineer to Ace Johnson, civil Engineer, regarding: Kleinhammer information request dated February 24. 19993..the fact that legal action has been filed against the City in this matter, we are necessarily required to receive City Manager and/or City Attorney direction to accumulate and disseminate such information.
379	9/14/1995	Letter from Richard Nichols to Ray Gallo "the kleinhammers" constitutes reference to (a) J.W. Kleinhammer, Dorothy Kleinhammer, J.W. Kleinhammer, Inc. and Richard Kleinhammer
380	7/29/1991	Memorandum to John McCarthy, Public Works Director to Roger Lyon, City Attorney regarding draft second Addendum (1 page); Second Addendum to Wastwater Interceptor Treatment and

		Addendum (1 page); Second Addendum to Wastwater Interceptor Treatment and disposal Agreement (6 pages)
381	9/11/1991	Newspaper Country News article "TCSD's Bill Miller quit "to save district and health"
382	2/16/1991	City council Agenda notes of Richard Kleinhammer, regarding: presence of Roger Picquet and Richard Ramirez present
383	2/19/1993	Letter to TCSD from Richard kleinhammer regarding document request (July 28, 1998, September 29, 1988 memorandum in the March 6, 1989, January 25, 1989 in the March 6, 1989)
384	2/19/1992	Letter to City from Richard Kleinhammer regarding copies of Minutes and Agenda for September 19, 1989 and August 15, 1989
385	3/15/1993	Letter to City John McCarthy document inspection, refused on March 4, 1993 and 10 days expired since request was made
386	2/12/1993	Hand written letter by Richard Kleinhammer requesting City council minutes and agenda for November 7, 1989
387	3/03/1993	Letter to Roger Piquet from Richard Kleinhammer spoke to Piquet March 3, 1993 …do you have records that are being requested from city; faxed to 805 543-3857 at 5:03 p.m.
388	3/04/1993	Letter to City of Paso Robles from Richard Kleinhammer regarding: review of all State Grant sewer line project (interceptor main) C-06-0701
389	2/24/1993	Letter to City of Paso Robles from

390	2/10/1993	Letter to City of Paso Robles, Manager/Clerk and Deputy City Clerk: (faxed February 10, 1993 hand delivered February 11, 1993)
391	4/09/1993	Notes of Richard Kleinhammer police officers at city
392	2/02/1993	Letter to John Belcher from Richard Kleinhammer ..map and description of grant funded service area
393	3/10/1993	Letter to city from John Kleinhammer requesting all legal fees billings January 1990 – March 1993
394	2/18/1993	State document request for grant documents from Kleinhammer
395	2/19/1993	Federal document request for grant documents from Kleinhammer
396		TCSD Waiting List
397		TCSD waiting list
398	5/20/1993	Kleinhammer to Federal Grand Jury
399	8/20/1993	Kleinhammer to County Grand Jury
400		LOAN TO PLAINTIFF'S FOR 71,000
401		ZND MORTGAGE ON PLAINTIFF PROPERTY APPROXIMATELY FOR 120,000
402		PAYMENT IN ESCROW OF 15,000
403		CONSTRUCTION OF HOME COST SPREAD SHEET
404		APPRAISAL COMPELTE BY CITY OF PASO ROBLES ATTORNEY Richard Nichols during prior litigation
405	3/10/1992	Letter to Mr. Ramirez from Mr. Kleinhammer information request for documents – legal fees
406	3/11/1993	Letter to Mr. PICQUET FROM MR. KLEINHAMMER RE: MARCH 12 DATE CONFIRMATION FOR

		KLEINHAMMER RE: MARCH 12 DATE CONFIRMATION FOR VIEWING AND REPORDUCTION OF DOCUMENTS ...NO ADDITIONAL RECORDS
407	4/12/1993	LETTER TO MR. PIQUET FROM KLEINHAMMER, RE: CANCELLATION OF MARCH 12, NO FILES WILL BE AVAIABLE UNTIL NEXT WEEK
408	3/15/1993	LETTER TO MR. MCCARTHY FROM MR. KLEINHAMMER, RE:DOCUMENT INSPECTION MARCH 4, 2008 NOTHING WAS AVAILABLE
409	3/31/1993	RECORD OF COMMUNICATION FROM JIM MEEKS EPA TO RICHARD KLEINHAMMER FOIZ REQ RIN 9-0499-93/ REQ FOR REPRODUCTION – PROJECT C 06 0701
410	5/27/1993	LETTER TO MR. PICQUET FROM MR. KLEINHAMMER, RE: FAILURE TO PROVIDE DOCUMENTS REQUESTED, 1971 CITY OF PASO ROBLES ENVIRONMENTAL IMPACT STATEMENT

APPENDIX N

2006

Dear Rick

I know it has been a very long time since I have spoke to you, and I am soy for that, Since you have been released I have been doing a lot of sole searching ad thinking about the issue surrounding your imprisonment. I hope one day we will be able to talk more in depth about it, but for now I have a few things to say that I have been thinking a lot about.

I want you to know that I never wanted you to go to prison for so long. I think that was way to long for what happened between us. I also never thought you should have been charged with rape. I told the District Attorney, Larry Green, that I did not consider what happened rape and did not want him to charge you with that. Using force during sex was never an issue in out marriage and I do not believe that you had intent to rape me. (as they chaged you with) Even though I did not want to have sex with you at the time, because of issues surrounding or serparation, I obviously did not voce my feelings because you thought that is what I wanted. Imislead you by telling you that I was going to stop the divorce and lead you to believe that we were going to get back together. In addition, I was asked during the trial if I agreed to have sex with you and I answered, yes.

I know that me saying this know doesn't give you back the part of your life you have lost. There is so much more that I would like to talk to you about. I'm hopefull that we will be able talk one day soon.

Sincerely,

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct.

s/ Lisa Busha
Lisa Busha 5-4-06

CALIFORNIA ALL-PURPOSE ACKNOWLEGMENT

State of California
Count of San Luis Obispo } ss.

On 5-4-06 before me, Helena Berald, Notary Public,

Personally appeared Lisa Busha

[ ] personally known to me
[x] provided to me on the basis of satisfactory evidence

To be the person ~~(s)~~ whose name~~(s)~~ is are subscribed to the within instrument and acknowledged to me that ~~his~~her~~their~~ executed the same in ~~his~~her~~their~~ authorized capacity~~(ies)~~ and that by ~~his~~her~~their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted executed the instrument.

WITNESS my Hand and Official seal.

s/ Helena Berald

APPENDIX O

BLUM COLLINS LLP
THE AON CENTER
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SUITE 4880
LOS ANGELES, CA 90017
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CRAIG M. COLLINS, BAR NO. 151582

Attorney for Plaintiff Richard Kleinhammer

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD KLEINHAMMER, Plaintiff,
vs.
CITY OF PASO ROBLES, et al.
Defendants

DECLARATION OF RICHARD KLEINHAMMER IN OPPOSITION TO BOTH MOTIONS FOR SUMMARY JUDGMENT FILED BY DEFENDANTS CITY OF PASO ROBLES, JERRY BANKSTON, RICHARD RAMIREZ, JAMES APP, AND ROGER PICQUET, AND BY DEFENDANTS TEMPLETON COMMUNITY SERVICES DISTRICT AND BILL MILLER Case No. SACV 06□0798□JFW (JTL)
[Concurrently filed with Opposition to Motion for Summary Judgment, Separate Statement, and Declarations]

Filed: January 26, 2009

Date: February 9, 2009
Time: 1:30 p.m.
Dept.: 16
Trial Date: April 14, 2009
Kleinhammer v. City of Paso Robles
Case No. CV 06-0798 JFW (JTL)
Declaration of Collins in Opposition to Both MSJ Motions

DECLARATION OF RICHARD KLEINHAMMER

I, Richard Kleinhammer, declare as follows:

1. I am the plaintiff this action.

2. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I would and could testify competently to those facts.

3. For purposes of this declaration, I will use "TCSD" to refer to Templeton Community Services District and Bill Miller. I will use "CITY" to refer to Defendants City of Paso Robles, Jerry Bankston, Richard Ramirez, James App, and Roger Picquet.

THE FACTUAL BACKGROUND

4. The CITY and TCSD are adjacent public entities which have a small "intervening area" between them. In 1971, the CITY and the TCSD were individually unable to obtain any federally funded grant for sewers or processing plant. Finally, as a result of the CITY's application for a regional plant and collection line (called the sewer interceptor) running from TCSD to the

CITY, the federal government funded con-struction of a waste water collection system in the TCSD, the regional interceptor line, and the development of the regional plant in the CITY. The CITY represented at the time of the application (in an environmental impact statement and appli-cation to the federal government) that the grant funds would be used for the construction of the regional sewer plant and the regional sewer interceptor that would serve the CITY, the TCSD and the intervening area. All engineering computa-tions were based on service to this area. I owned a home and land ("Home and Property") in this intervening area. My parents owned vacant land adjacent to mine.

THE TCSD AND THE CITY VIOLATED MY CIVIL RIGHTS AND INVERSELY CONDEMNED MY PROPERTY IN A CONTINUING PATTERN

5. From the time that I obtained my Home and Property in this case in about 1986, the TCSD and the CITY violated my civil rights and inversely condemned my property.

6. The pending motions for summary judgment deal only with the statutes of limitations issue (and equitable tolling). However, some background about the underlying case is necessary to put it in context. The Defendants' abuse of their power in regards to me (and my parents) continued over many years and manifested itself in many different ways.

The TCSD Abused Its Power in an Effort to Take Our Water Rights

7. Our problems with these Defendants began when the TCSD illegally tried to block us from ever developing our property because it wanted to take our groundwater rights.

8. My parents' and my property sat over an extremely productive groundwater aquifer. The TCSD began to eye our water covetously after the State Water Resources Control Board in 1981 issued a cease and desist order restricting the TCSD's use of water from Salinas River. Three years later, in 1984, the TCSD responded to this order by adopting a wait-ing list of the issuance of water connections. After this wait-ing list was adopted, the TCSD preferentially handed out water connections to politically favored persons, such as TSCD manager Bill Miller for four lots in July 16, 1985 and TCSD director Tim MuCutcheon for service of four lots on July 29, 1985. Two other TCSD board member were placed on the waiting list ahead of us as well (i.e., Thompson and Bergman).

9. The TCSD refused to take any action to provide us water and sewer because
(I believe) the TCSD wanted to pump our water for sale to its other customers.

10. On or about 1986, my father and I prepared and submit-ed a proposed general plan amendment and an application for development of 112 single family. Residences on our Property ("proposed subdivision"), to the County of San Luis Obispo ("County"). The County subsequently requested verification of the TCSD's agreement to provide water and sewer service to the proposed subdivision. I believe that TCSD manager Miller informed the County that we would be placed upon a waiting list for water service, that sewer service for the proposed subdivision would have to be obtained from the City, and that the TCSD opposed the proposed subdivision on matters unrelated to water or sewer service (i.e., its desire to seize our ground-water).

11. On or about 1986, the TCSD Board of Directors formally opposed the proposed subdivision on the basis of land use concerns unrelated to its ability to provide water or sewer

service to our proposed project (i.e., its ultimate desire to take our groundwater).

12. My father and I sought to confirm the TCSD's commitment to the issuance of a "will serve" letter by written correspondence on or about August 29, 1986. On or about September 15, 1986, the TCSD denied our request and assigned us number 31 on a waiting list for water and sewer service pursuant to TCSD Ordinance 2-84.

13. On or about January 1988, my father and I requested the TCSD Board of Directors to take action on our request for water and sewer service. The TCSD Board of Directors refused to take any action on our request.

14. On or about June 1988, a subsequent request by us was made upon the TCSD for the immediate issuance of water and sewer services. Again the TCSD took no action on our request.

15. In September 1988, my father and I filed a lawsuit against the TCSD in the County of San Luis Obispo, San Luis Obispo Superior Court (Case No. 65337), requesting a declaration that our overlying groundwater rights were prior and paramount to the appropriative rights of the TCSD. The action was settled by TCSD's acknowledging that our overlying rights are prior and paramount to the TCSD's rights
and that we had first priority to the groundwater.

16. Having grown confident that we didn't need community water, we abandoned the proposed subdivision and rede-signed it to utilize a private, nonprofit mutual water company onsite to provide water service for approximately 56 single family homes, consistent with existing zoning.

17. After we proposed in effect excluding the TCSD, the TCSD suddenly claimed that it possessed available sewer

capacity to serve the redesigned subdivision. We renewed our request to the TCSD to provide sewer service.

18. At first, the TCSD led us to believe that it would finally be reasonable. On or about March 21, 1989, the TCSD took action on our request for sewer service and confirmed that the TCSD "presently has capacity available in its sewer systems to collect and dispose of any sewage generated by the 56 lots of Tract 1679." The TCSD further indicated that payment of appropriate fees, the execution of a main extension agreement and compliance with all other TCSD rules and regulations would be required prior to issuance of service to the redesigned subdivision.

19. I believe that the TCSD rules and regulations in existence at the time merely required deposit of necessary fees. The sole prerequisite under the rules for extending water or sewer mains was "voluntary assumption on the past of the prospec-tive consumer to be benefited of all costs and expense of ex-tending such water mains." We agreed to deposit all necess-ary costs and to assume the costs of a reasonable main ex-tension.

20. On or about December 31, 1987, the TCSD informed us for the first time that its ability to provide sewer service was limited by the Court Judgment from its lawsuit with the CITY years earlier and its Contract with the CITY.

21. The TCSD had tricked us.

22. In about 1986, Defendant Miller of TCSD told me that if the Kleinhammers would consent to the annexation of their property to the TCSD, TCSD would provide water and sewer service. TCSD needed to annex the my parents' property and mine as a means to annexing also the adjacent subdivision, Country Oaks, which lay to the east of our property. TCSD wished to acquire the water rights from a well on the Country Oaks property. Without first annexing the my property, TCSD

could not annex Country Oaks because the Country Oaks annexation would then be a non-continguous island. The local agency information guidelines prohibited island annexation.

The TCSD Abused Its Power by Tricking us Into Annexation

23. On or about 1985, my father and I inquired into the possibility of annexing our property into either the City or the TCSD, both of which could provide water and sewer service. In reliance upon representations of TCSD manager William F. Miller that the TCSD had available water and sewer service and that the TCSD's rates and connection fees were lower than those of the CITY, we pursued annexation into the TCSD as a component of Annexation #7.

24. On or about October 29, 1985, TCSD manager Miller warranted to LAFCO that the TCSD was at sixty□three percent (63%) of its sewer capacity and that Annexation #7 was included within this sewer capacity figure.

25. On or about February 1986, the TCSD completed an annexation report indicating that the TCSD was capable of providing water and sewer service to my property. I believe that the TCSD prepared this report with full knowledge that its right to sewer capacity was limited by a court judgment in an action brought by the TCSD against the City entitled Templeton Community Services District v. City of Paso Robles, San Luis Obispo Superior Court Case No. 54536 ("Court Judgment"), and that the City, not the TCSD, was providing sewer service to a development, commonly known as the Bonita Homes development, which comprised the remainder of Annexation #7. The Court Judgment was entered on or about May 10, 1983.

26. Under the terms of the Court Judgment, the TCSD collects sewage and sends the effluent to the City for treatment in

accordance with a contract between the CITY and the TCSD. Effluent collected by the TCSD is transmitted to the CITY through an "interceptor line." The permitted use of the interceptor line is set forth in a contract between the City and the TCSD ("Contract"), and is subject to the Court Judgment which determined that the Contract prohibited the TCSD from connecting to the interceptor at any point other than Cannon Street in Templeton as authorized by the Contract.

27. In reliance upon the TCSD's representations and the annexation report prepared by the TCSD, I agreed to annex my property into the TCSD as a part of Annexation #7. The annexation was consummated by Resolution 3□86 adopted by the TCSD on February 13, 1986.

The CITY Abused Its Power by Authorizing Water Connections to Favored Others but not to Us

28. On or about October 13, 1987, the City refused water and sewer service to my Home and Property because of the Court Judgment and the Contract. Although the Bonita Homes development is not within the boundaries of the City, my father and I are informed and believe, and on that basis allege, that the City provides sewer service to the Bonita Homes development, also a component of Annexation #7.

29. In addition, the CITY issued "will serve" letters for sewer service via the regional interceptor line to numerous other properties in the intervening area, and renewed various "will serve" letters, up to and including the year 1993. These properties include Templeton Realty, Templeton Radiology, Central Coast Woodburning, four condominiums, Miller Drilling, Templeton Glass, Totally Tile, Historic Motor Sports, Exstress Foods, Archer Lanes, Pacific Auto Glass, Templeton Pioneer Foursquare Church, Sterling Spa Shop, Carpets 4 Less, Cal. Coast Machinery, Running Deer Ranch Hardware, Gourmet Foods, PG&E Service Center and Country News.

Without a rational basis, TCSD and the CITY denied me sewer service numerous times in this same time period.

The CITY was Estopped to Deny Us Water and Sewer by its Promises Made to the Federal Government to Obtain a Subsidy

30. The CITY's refusal to provide water and sewer service to my parents and I was contrary to promises that the CITY had made to the United States Government to the effect that, if the United States funding the construction of a regional sewage treatment plant (which it did), the CITY would serve the entire region with it (and not just areas within CITY limits).

By Defendants' Absurd Requirement That We Connect a Mile Away Uphill, Rather than to Perfectly Adequate Capacity Immediately Adjacent to Our Property, is Arbitrary, Irrational and Capricious

31. The authorized connection point under the Contract is more than a mile and one-half from my property, and uphill. The CITY's refusal to allow us to connect to an existing sew-er main, which had already been constructed right up to the edge of my property, was arbitrary, irrational, and capricious.

32. To connect at the Cannon Street location as required by the CITY, I would have been required to construct a main extension approximately a mile and one□half long at the cost of approximately $1 million. My entire property at the time was worth, if developed, more in the neighborhood of $325,000. Thus, the CITY required me to spend approximately three times the total value of my property simply to obtain sewer service, when a perfectly adequate existing pipe had already been constructed to the edge of my property.

33. At one point, the CITY staff consented to the easterly terminus connection so long as the capacity utilized by our project would be accounted for out of the TCSD's available capacity (not the CITY's).

34. On or about June 1989, counsel for the CITY expressed the CITY's position that no service would be made available to customers outside the CITY's boundaries, and that the easterly terminus connection would be approved only so long as capacity was charged to the TCSD. 35. On or about May 14, 1989, and June 22, 1989, the TCSD refused to take action on my father and I' proposed easterly terminus connection, even though the City conditionally consented to the proposed connection.

36. On or about 1989, the TCSD adopted a new ordinance governing the issuance of water and sewer service.
37. On or about July 26, 1989, my father and I applied for sewer service under the new ordinance, paid appropriate fees and were granted a "Will Serve Commitment for Sewer Service to San Luis Obispo County Assessor's Parcel No. 40-131-38." The "Will Serve Commitment" is expressly made subject to the TCSD's previous main extension requirement.

38. I was thus forced to make an election to either construct a mile and one-half long main extension or to provide onsite sewage treatment which would cost more than my entire property, if the CITY or the TCSD do not provide sewer service to me at the easterly terminus connection.

The Feud Between the TCSD and the CITY Was Intense
39. While our project needed some cooperation between the TCSD and the CITY, those two agencies were publicly feuding in a most unpleasant way. The managers of each Defendant were publicly calling the other a liar. Or a "Nazi." (See April 22, 1998 Confidential Memorandum from Defendant Miller to

Defendant Bankston, a true copy of which is attached hereto as Exhibit 16.)

40. For years, the TCSD had read water meters in the intermediate area (i.e., where my property was located), and then provided this information to the CITY. The CITY would calculate sewer charges for its customers in the same area based on how much water they used. The feud between the two agencies got so personal that TCSD simply stopped providing its water meter readings to the CITY. The CITY told me that it would not allow me to hook up to the existing sewer pipe already built right to the edge of my property because the TCSD was refusing to provide water meter readings to it, and thus the CITY would not know how much to charge my property for sewer service. The CITY was unwilling to read the meters itself because of the expense.

41. The CITY and the TCSD from 1986 had a serious dispute on the extent of each entity's sphere of influence in the intervening area. This dispute became known as the "border war." It started in 1982 where there was a hotly contested sphere of influence hearing before LAFCO. LAFCO staff recommended the area go to the CITY because the CITY had the ability to serve the area. TCSD objected, amassed public support and the commission's ultimate decision sided with TCSD (even though TCSD could not serve the area), determining that its sphere of influence should extend to Highway 46, which was unacceptable to the CITY. The area in dispute was less than one-half mile of property between the two entities.

42. In 2006, the CITY finally won this battle (that my parents and I had been caught up as pawns in) and successfully annexed a huge chunk of the intermediate area.

The CITY's Ulterior Motive was to Annex the Intermediate Area

43. The CITY's ulterior motive in holding up our project was to extract from the TCSD its capitulation to the CITY's desire to annex more territory for itself (territory which the TCSD also wanted). Thus, the CITY's decision on our requests for water and sewer service had nothing to do with the merits of our request. We were held up as hostages in an inter[lagency feud that had nothing to do with our property or sewer connection.

The Defendants' Retaliation Against Me Intensified After I Reported Their Conduct to the Federal Grand Jury and Notified The CITY of a Code Violation

44. It seemed to be that the CITY had misrepre-sented to the United States Government that it would provide sewer service to the "intermediate area" (i.e., where my property was located) if the United States Government funded regional infrastructure (i.e., the interceptor line carrying sewage to a new regional plant). I felt that the CITY may have defrauded the United States Government in obtaining that grant.

45. On August 12, 1993, I reported my concerns to the Federal Grand Jury in Los Angeles, California and to the Grand Jury in San Luis Obispo, California. A true copy of my letter to the Federal Grand Jury is attached hereto as Exhibit 17.

46. At around the same time, I found a provision in the CITY municipal code that required the CITY to collect sewer charges, and notified the CITY that it was committing a misdemeanor by not reading the meters and appropriately collecting sewer charges.

47. Within weeks after doing so, in December 1993, I was arrested by local police and spent the next 11 years incarcerated.

This Pattern by the Defendants of Improper Conduct Damaged Me

48. As a result of the Defendants' lengthy pattern of false statements, reneging on promises, and arbitrary refusal to carry out their duties in the public interest, I became financially ruined. I was unable to continue paying the mortgage payments on my home. Finally, I lost ownership of my Home and Property in September 1994, after I was incarcerated.

THE FEDERAL COURT IN KLEINHAMMER I ADJUDICATED THAT THE STATUTE OF LIMITATIONS DID NOT BEGIN TO RUN BEFORE SEPTEMBER 1994

49. As they are doing here, these same Defendants filed a motion for summary judgment on statute-of-limitations grounds against my father in Kleinhammer I.

50. Exhibit 2 is a true copy of the U.S. District Court's Order denying the Defendants' motion for summary judgment on the grounds that "...plaintiffs' [sic] alleges continuing attempts to obtain sewer service and the [sic] alleges continuing Kleinhammer v. City of Paso Robles denials by the public entities, which would preclude a defense based on the statute of limitations. The triggering point of the statute is the last denial... For purposes of this litigation, the earliest possible date on which to base the statute was foreclosure of the trust deeds on plaintiffs' property in September 1994, when plaintiffs were damaged by loss of the foreclosed property.

51. I, too, was subject to a continuing pattern of violations, and thus my statute of
limitations did not begin to run until I lost my property in foreclosure.

I THOUGHT MY STATUTES OF LIMITATION WERE TOLLED WHILE I WAS INCARCERATED

52. I was incarcerated continuously from April 1994 to November 2005.

53. I lost my property in foreclosure in September 1994.
54. After I lost my property in September 1994, I researched the statute of limitations. I found California Code Civ. Proc. § 352 which said that my statutes of limitation were tolled until I was released.

55. I relied on this in not filing suit until after I was released in 2005.

56. In about 1996 or so, I checked the tolling provision again by using a volume of the West Annotated Code in the Lancaster Prison Library. When I checked it, this volume of the Code still had the original version of Code Civ. Proc. § 352. I even checked the pocket part.

57. In about 2004 or 2005, I checked the tolling provision again by using a volume of the West Annotated Code in the Lancaster Prison Library. When I checked it, this volume of the Code still had the original version of Code Civ. Proc. §

352. Again, I checked the pocket part.

58. I read the declaration of Ms. Rowe saying that the law library would conduct an annual inventory check. I know that the annual inventory check would be done over the course of a single day. The law library would be closed for that day. The library had, I would estimate, over a thousand separate volumes of law books of one kind or another. There is simply no way the library staff could carefully check each page of

over 1000 volumes of law books during an annual inventory check to see if a page might be missing here or there.

I FILED THIS ACTION AND REPRESENTED MYSELF UNTIL DECEMBER 2008

59. I was released from incarceration in November 2005. I filed this action (Kleinhammer II) in August 2006 (i.e., approximately nine months later). This was well within the one-year statute of limitations that I believed that had been tolled during the period of my incarceration according to California Code Civ. Proc. § 352.

60. I contacted the TCSD even sooner than this. I wrote to the TCSD approximately 60 days (in January 2006) after I got released from prison hoping to settle the case without litigation. In that letter, I made a monetary settlement demand and said that, if not paid, I would file a lawsuit. The TCSD's counsel write me back almost immediately rejecting my settlement proposal. (See February 10, 2006 letter from the TCSD to me, a true and correct copy of which is attached as Exhibit 6.)

61. I also wrote immediately after being released from prison to the CITY proposing settlement discussions. Again, I made a monetary settlement demand and said that, if not paid, I would file a lawsuit. The CITY's counsel wrote me back February 21, 2006 declining to negotiate with me. (See February 21, 2006 letter from the CITY's counsel to me, a true and correct copy of which is attached as Exhibit 14.)

62. Then, the CITY and the TCSD, for the next approximate-ly two and a half years, took no depositions, nor did they begin refreshing witnesses' recollections, etc. They simply allowed more time to pass without getting ready for trial.

I ACTED REASONABLY UNDER THE CIRCUMSTANCES

The Prison Library Was Not Regularly Updated

63. I have read the declarations submitted by the Defendants regarding the rules requiring the Lancaster State Prison Library to update its legal books regularly. Although when I was incarcerated I believed that the books that I would be using would be the most current, I now in retrospect realize that they were not.

64. While incarcerated, I had no access to any computerized legal research database, nor any access to the internet, nor any other means to check the current law other than to use the prison library.

65. My cellmate Earl Marlin worked in the prison library. Mr. Marlin once told me that he knew the library had "stacks" of updated volumes and pocket parts that were in storage but never placed on the library shelf where someone like me could access them.

66. In 2002 or 2003, while I was incarcerated, a guard that I knew (and who knew that I was interested in the law) showed me a law library at the prison full of unpacked boxes of law books. In other words, it was a law library with a full set of law books on the shelves, which inmates were not allowed to use, and which was full of stacks of
unused law books either still in boxes, wrapped in string, or otherwise still packaged. The guard told me that this was the library that prison staff used. When I later mentioned this to Mr. Marlin, he confirmed for me that this is the room full books that
the prison was receiving but no longer distributing to the library shelves. As I read the Declaration of Linda Rowe submitted with the Motions for Summary Judgment, I see that

she refers to Lancaster Prison has having had a "Central Library utilized as an intake and distribution library." I presume this room that I saw once was the "Central Library." It was used by prison staff members, not inmates.

67. Mr. Marlin informed me that the non□inmate library staff had said that they were "sick and tired" of distributing new law books to the shelves, which the inmates would then rip pages out, steal pocket parts, etc. He said that the staff felt it was a waste of their time to distribute new books to the shelves where they would likely get ripped up, stolen, or damaged.

I Made the Effort to Attend Law School in Diligent Pursuit of my Claims

68. I was so intent on pursuing my claims against the TCSD and the CITY diligently that I attended law school in order to better learn how to do it. I attended a correspondence course with Newport University while incarcerated and eventually earned my J.D. degree.

69. I knew that I couldn't afford to hire a lawyer to pursue my claims for me (because the Defendants' conduct had financially ruined me). So, rather than simple do nothing, I spent many hard hours studying for my law degree, which I eventually obtained. I did not simply sit around.

I Could not Have Conducted This Litigation While in Prison

70. I could not reasonably have conducted this litigation while in prison, even if I had been aware of the statute of limitations. I am aware that inmates often file habeas or other types of lawsuits while in prison. I'm unaware of anyone who has filed and
managed to conduct complex civil litigation while in prison.

71. In the CITY's Initial Disclosures, for example, the CITY states that it has located 31 boxes of documents from the Kleinhammer I litigation. (CITY's Initial Disclosures, p. 2, l. 22, Exh. 7 hereto.) I know that my files contained a similar volume
of paper.

72. While incarcerated, I was told that I could keep at most a single cubic foot of documents in my cell. To obtain more documents in lieu of any that I might have already had, I would need to make a request. There was no guarantee that such a request would be granted, and when it was granted it would take weeks to occur. I had a habeas corpus action pending and needed the documents for this case in my cell. That used up my one cubic foot of space. Thus, I would have had to choose between maintaining a habeas corpus action or pursuing my civil claims. I asked several officers if I could have a box of documents in my cell for a civil case. They told me that I could not unless I had already filed a suit. I, of course, could not have taken any depositions of defendants or witnesses while incarcerated.

73. In short, it would have been practically impossible for me to have conducted this litigation from prison.

74. Some time between 1997 and 2003, I learned through my legal research that I needed to submit state tort claims in order to preserve my state law claims against them. I prepared a claim against the TCSD and one against the CITY. I sent these claims to the State of California State Board of Control, believing that this was the correct place to send the claims.

75. Soon after I sent these administrative claims to the State of California, the State of California wrote to me informing me that the TCSD and the CITY were not state agencies, and that those local agencies would need to be notified. I wrote back to

the State of California and asked that they notify those two agencies of my claims. I presume that they did so.

76. I feared contacting the CITY and the TCSD directly while in prison. I believed that my stirring up a fuss about my rights with those two agencies had led to me being arrested, sentenced, and imprisoned on weak or nonexistent evidence.

77. Over time, I saw retaliation by prison staff members at Lancaster State Prison against any inmates who were engaged in litigation. I don't know why this pattern existed or what motivated the prison staff members to do this. I just know that I witnessed the pattern. I would have been afraid to conduct any civil litigation while incarcerated there.

THE DEFENDANTS HAD NOTICE THAT I INTENDED TO FILE THIS LAWSUIT

I Served the Defendants With a Copy of My Draft Lawsuit in 1992 Alleging Violations of my Civil Rights and Inverse Condemnation (i.e., the Same Claims that I Assert in the Instant Lawsuit)

78. In 1992, my parents hired an attorney named Scott Slater at the Hatch and Parent law firm to draft a proposed complaint regarding the endless runaround (and false representations and refusals to act reasonably) that were getting from the TCSD and the CITY. Mr. Slater drafted this complaint and gave me a copy. A true and correct of the draft complaint, which I received from Mr. Slater, is attached hereto as Exhibit 1 hereto. I did not retain Mr. Slater. My parents did.

79. The plaintiffs in this draft complaint are: J.W. Kleinhammer, Inc. (my father's company), John Kleinhammer (my father), and Rick Kleinhammer (i.e., me, as I was commonly known as Rick rather than Richard).

80. The defendants in this draft complaint are the TCSD, Bill Miller, and the CITY (as well as other parties not relevant to this case).

81. The proposed causes of action in this complaint were: writ of peremptory mandamus against the TCSD, writ of peremptory mandamus against the CITY, Violation of Civil Rights (and Denial of Substantive and Procedural Due Process, and Equal Protection) against the TCSD, inverse condemnation against the TCSD, and declaratory relief against the TCSD and the CITY.

82. My current complaint in the instant action contains two of these same causes of action: i.e., for violation of civil rights (i.e., 42 U.S.C. §§ 1983 et seq.) and for inverse condemnation.

83. In January 1993, my father and I took this draft complaint to the CITY. We tried to give it to Defendant Richard Ramirez. Mr. Ramirez said that he could not accept it, and that we instead had to give it to a clerk. We handed it to a female clerk, who then walked into Mr. Ramirez' office and handed our draft complaint to him. Mr. Ramirez then said he would talk to us. We told Mr. Ramirez that we would file this lawsuit unless the CITY relented and approved our sewer connections. We were reluctant to file the lawsuit at this time both because of the huge expense involved in litigation and because at this time we still (naively, I know now) hoped to preserve a good relationship with the CITY and the TCSD.

84. This draft complaint gave the CITY the information that I owned part of the subject property (and identified the property by legal description) (Exh. 1 hereto at ___),

85. I believe that our handing a draft complaint to the CITY had the effect of convincing the CITY that litigation was imminent because the CITY began acting as if we had already

filed the lawsuit (which we had not). Exhibit 13 hereto, for example, is
a true copy of CITY manager Richard Ramirez' February 23, 1993 letter to me. CITY manager Ramirez refuses to meet with me about any agreement for water or sewer service because "this item is being litigated and further meetings will not be scheduled without both attorneys present." In reality, there was no litigation. We had merely
shown the CITY a draft complaint. The CITY, however, obviously was preparing for litigation with us even before we filed it.

86. We delivered a copy of the draft complaint to the TCSD in December 1992. Months later, I made requests for documents from the TCSD pursuant to California's Public Records Act. One of the documents that the TCSD produced to me was a copy of this draft complaint.

87. Before and after I served this draft complaint on the Defendants, I stated repeatedly in person to members of the CITY and TCSD staff members that I intended to sue the CITY and the TCSD. I did so (in vain) in an effort to convince them to put our requests for water and sewer service on an agenda and hold a fair hearing.

My Parents Filed a Similar Case in January 1995 (After I Had Been oncarcerated)

88. In 1995, my parents filed a lawsuit against the TCSD and the CITY. A true copy of their complaint is attached hereto as Exhibit 15. For convenience, I will refer to my parents' lawsuit as Kleinhammer I. I will refer to the instant lawsuit as either "the instant lawsuit" or Kleinhammer II.

89. The allegations against these Defendants in Kleinhammer I are essentially the same as my allegations in my complaint in Kleinhammer II. In fact, I drafted my complaint in

Kleinhammer II largely by copying from the complaint in Kleinhammer I. The complaint in Kleinhammer I mentions me by name in the body of the complaint, though I am not named as a party. (See TCSD's Request for Judicial Notice, Doc. No. ___, Exh. A, at p. 5, ll. 24-28.)

My Father Testified at Deposition in Kleinhammer I That I had Suffered Damages

90. In the Kleinhammer I case, counsel for the TCSD and the CITY took my father's deposition on six separate days, including on May 9, 1996.

91. Attached as Exhibit 4 is an excerpt from the transcript for that deposition. In response to a question, my father informed the counsel for the CITY and the TCSD (both of whom were present) that I had suffered damages as well:
"Q. So is it your belief that Richard Kleinhammer has suffered similarly to the way that you have suffered as a result of this problem?
A. Yes." (Exh. 4, at p. 393, ll. 20-23.)

92. Since by this time I had been incarcerated, the Defendants would have known that my statutes of limitation would be tolled until I got out. Yet they failed to prepare for the ultimate defense of my case (i.e., by preserving testimony, or whatever).

THE DEFENDANTS WILL NOT BE PREJUDICED BY HAVING TO DEFEND THESE CLAIMS

The Key Witnesses' Testimony Has Been Preserved by Depositions

93. The main reason that there will be no prejudice to the Defendants in this action from allowing my claims to go forward is because all or nearly all of the key witnesses have

had their depositions taken in Kleinhammer I. I believe 20 witnesses were deposed in Kleinhammer I. The Kleinhammer I lawsuit involved nearly identical claims, real estate, parties, and lawyers.

94. Previously in this action, the Defendants filed Rule 26 reports identifying the witnesses whom they believed had information relevant to this case. (See CITY's Rule 26 Report, Exh. 7 hereto, at p. 2 ll. 12-17; and TCSD's Rule 26 Report, Exh. 8 hereto.)
Most of the witnesses that the Defendants believe might have relevant knowledge were deposed at length in Kleinhammer I with counsel representing both the CITY and the TCSD present. The following is a list of all witnesses identified by the Defendants in Kleinhammer II, along with information about whether these witnesses were timely deposed as to their then-current recollections by attorneys for the CITY and the TCSD in Kleinhammer I (which involves nearly identical issues, parties, and property).

Witnesses Identified in Defendants Rule 26 Reports in Kleinhammer II	Date Deposed	Counsel Present
App, Jim (City Asst. Manager; City Manager after 1997)	5-3-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo (plaintiffs) Steven Krongold on behalf of David Wiechert (TCSD) Richard W. Nichols (CITY)
Bankston, Jerry (City Manager)	4-29-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo (plaintiffs) David Wiechert (TCSD) Richard W. Nichols (CITY)

Bergman, Robert	N/A	Even though Mr. Bergman was a TCSD director, counsel for the Defendants didn't bother to take his deposition in either Kleinhammer I or Kleinhammer II. He is not an important witness.
Blumin, Robert	N/A	Mr. Blumin was a private lender who had financed my parents'

Witnesses Identified in Defendants Rule 26 Reports in Kleinhammer II	Date deposed	Counsel Present
		project. Counsel for the Defendants didn't bother to take his deposition in either Kleinhammer I or Kleinhammer II. He is not an important witness.
Busha, Lisa	N/A	Mr. Busha is my ex□wife. Counsel for the Defendants didn't bother to take her deposition in either Kleinhammer I or Kleinhammer II. She is not an important witness.
Dargan, Katherine	N/A	Even though Ms. Dargan was a TCSD director, counsel for the Defendants didn't bother to take her deposition in either

		Kleinhammer I or Kleinhammer II. She is not an important witness.
Gallo, Ray	N/A	Mr. Gallo, who was my parents' lawyer in Kleinhammer I, is still alive and living in the Central Coast area. Counsel for the Defendants didn't bother to take his deposition in Kleinhammer II. Obviously, they do not Believe he is an important witness.
Hood, Paul (LAFC)	6-20-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols

Witnesses Identified in Defendants Rule 26 Reports in Kleinhammer II	Date deposed	Counsel Present
Kleinhammer, Dorothy	N/A	Dorothy Kleinhammer is still alive and living in the Central Coast area. She has lived there continuously since at least 1995. Defendants elected not to depose her either in Kleinhammer I or Kleinhammer II. Obviously, they didn't consider her an important witness.
Kleinhammer, John W.	5-8-96	Vol. 1 5-9-96 Vol. 2

		5-10-96 Vol. 3 6-26-96 Vol. 4 6-27-96 Vol. 5 6-28-96 Vol. 6 Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols Ray Gallo Steven Kurgold on behalf of David Weichert Richard Nichols Ray Gallo David Wiechert Richard Nichols
Kronick, Stephen	N/A	Mr. Kronick was the TCSD'scounsel in Klein-hammer I. Counsel for the defendants did not take his deposition in Klein-hammer II. Obviously, they do not consider him to be an important witness.
Lesage, Michael	5-1-96	Counsel for Kleinhammers, (City Atty)

Witnesses Identified in Defendants Rule 26 Reports in Kleinhammer II	Date deposed	Counsel Present
(City Atty)		TCSD and CITY: Ray Gallo David Wiechert

		Richard Nichols
Lyon, Jay	N/A	Even though Mr. Lyon was a TCSD Director of Municipal Services, counsel for the Defend- ants didn't bother to take his deposition in either Kleinhammer I or Kleinhammer II. He is not an important witness.
Lyon, Roger (City Atty)	4-30-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols
Martin, Steve (City Council)	6-19-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols
McCarthy, John (City Engineer)	6-21-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols
Miller, William R. (TCSD Manager)	6-17-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols
Ovitt, Harry (SLO Board of Supervisors) (City Council)	5-1-96 5-3-96	Counsel for Kleinhammers, TCSD and CITY:

Witnesses Identified in	Date deposed	Counsel Present

Defendants Rule 26 Reports in Kleinhammer II		
(City Council)		Ray Gallo Steven Kurgold on behalf of David Weichert Richard Nichols
Picquet, Roger	N/A	Defendants elected not to depose him either in Kleinhammer I or Kleinhammer II. Obviously, the Defendants do not consider him to be an important witness.
PMK, California State Prison Los Angeles	N/A	Defendants elected not to depose her either in Kleinhammer I or Kleinhammer II
Ramirez, Richard (City Manager)	5-3-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo Steven Kurgold on behalf of David Weichert Richard Nichols
Slater, Scott (Kleinhammer Atty, Water Lawsuit 1988, Draft Lawsuit 1992)	6-25-95	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols Stanley Roden
Van Orden, William (TCSD	5-01□96 Vol. 1 6-19-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo

William (TCSD Manager)	Vol. 1 6-19-96 Vol. 2	TCSD and CITY: Ray Gallo David Wiechert Richard Nichols

95. There were several other witnesses deposed who are not on the Defendants' current witness lists in Kleinhammer II, but who had their then current recollections memorialized in deposition:

Additional Witnesses	Date Deposed	Counsel Present
Grantham, Michael Gary (City Engineer or Public Works)	4/30/96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols
Johnston, Charles E. (City Engineer, Public Works)	5-3-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo Steven Kurgold on behalf of David Weichert Richard Nichols
Reneau, Jerry	5-1-96	Counsel for Kleinhammers, TCSD and CITY: Ray Gallo David Wiechert Richard Nichols
Russel, Nick (City Council)	6/19/96	Counsel for Kleinhammers, TCSD and CITY:

		Richard Nichols

96. In sum, the only witnesses identified by either Defendant in Kleinhammer II who were not deposed earlier (with counsel for both Defendants in attendance) were my ex-wife, three TCSD Directors and the TCSD's former lawyer, my parent's private lender, my parent's lawyer (who is still alive, living in the area, and has excellent powers of recall), my mother (who is also still around, but whose testimony would probably be of little value in addition to the six full days of deposition testimony taken from my father), and Defendant Picquet (whom no party thought important enough to subject to deposition).

97. TCSD has filed declarations from Mr. Miller and Mr. Van Orden stating that their recollections could be refreshed. Both Mr. Miller and Mr. Van Order had their depositions taken in Kleinhammer I. Counsel for TCSD and the CITY were present at their depositions. The TCSD does not state what new information it would need to elicit from these witnesses now that wasn't already elicited from them in their previous depositions, and thus fails to demonstrate any prejudice.

98. The CITY has filed declarations from Messrs. App, Bankston, Piquet and Ramirez also stating that their recollections would need to be refreshed. All but Mr. Piquet had their depositions taken in Kleinhammer I. Counsel for TCSD and the CITY were present at their depositions. The TCSD does not state what new information it would need to elicit from these witnesses now that wasn't already elicited from them in their previous depositions, and thus fails to demonstrate any prejudice.

99. Counsel for the CITY also fails to identify what information it would need to elicit now from Mr. Piquet. At the

99. Counsel for the CITY also fails to identify what information it would need to elicit now from Mr. Piquet. At the time of most of the events in this case, Mr. Piquet was the law partner of Timothy J. Carmel, of the Carmel Naccasha law firm that currently represents the TCSD. (See Exh. 3.)

The Lawyers Representing the Defendants Have Been Involved for Many Years.

100. The CITY's and the TCSD's lawyers have been involved in this case from the beginning of these events.

101. The CITY is currently represented by the McDonough, Holland & Allen law firm. The CITY was represented by that same firm in Kleinhammer I. Earlier, Richard W. Nichols of that firm was lead counsel for the CITY and Iris Yang assisted him. Now, Iris Yang is lead counsel for the CITY on the case. The TCSD is currently represented by the Carmel & Naccasha firm. At the time of Kleinhammer I, Timothy J. Carmel, who is TCSD's current counsel, represented the CITY as well (though not in the actual litigation).

The Lawyers Representing the Defendants Conducted Discovery About Me in Kleinhammer I

102. Throughout the Kleinhammer I lawsuit, the lawyers representing the TCSD and the CITY conducted much discovery into me and my claims.

103. For example, Exhibit 9 hereto is a September 14, 1995 letter from Richard W. Nichols of the McDonough, Holland & Allen law firm (which currently represents the CITY in the instant lawsuit) asking for an all□encompassing production of Documents sent to or by the "Kleinhammers." The McDonough, Holland & Allen law firm defined

McDonough, Holland & Allen law firm made this request to my father's attorney and not to me, my father had possession of all of my files since by this
time I had been incarcerated. I had entrusted my files to him before I became incarcerated. Thus, these Defendants had all my documents back in 1995 (or the means of compelling discovery to obtain them if they so chose), and could have taken whatever depositions or propounded whatever follow-up discovery they thought would assist the preparation of their defense.

104. The TCSD and the CITY also conducted a significant amount of discovery in my actions as part of the Kleinhammer I lawsuit because of my role as an employee of the corporate plaintiff in that case J.W. Kleinhammer, Inc. I made several requests to the Defendants for water and sewer service as an employee of J.W. Kleinhammer, Inc., which owned my father's property, in addition to requests that I made on my own behalf. The CITY was very interested in my precise role in the Kleinhammer I case, as illustrated when it informed the Court in that case: "In Paso Robles' view, Richard's personal and individual acts and conduct in connection with many of the Corporation's requests for service and/or connection, ...will be highly relevant to a full and complete understanding of Paso Robles'
responses to those requests." (CITY's Opp. to Motion in Limine, Exh. 18, at p. 5, ll. 18□21.)

105. Since the CITY and the TCSD believed that my individuals acts were "highly relevant" to the Kleinhammer I case, one can presume that they conducted whatever discovery they needed into those acts and have preserved that evidence.

The Lawyers Representing the Defendants Conducted no Discovery in Nearly Two Years After I filed This Case

106. I don't see how the Defendants could be prejudiced by the fact that some of their witnesses now state that they recollections would need to be refreshed. I filed this case in late 2006. The Defendants conducted no discovery for nearly two years after this case was filed. I filed this case August 24, 2006, and Defendants filed their Rule 26(f) Report on June 13, 2008 (Exh. 5 hereto) admitting "[n]o discovery has been conducted[.]"
(Defendants' Rule 26(f) Report, p. 4, ll. 22□23, Exhibit 5 hereto.) Having done nothing to advance discovery for nearly two years, the Defendants ought not be heard now to complain that they must refresh witnesses' recollections.

The Defendants' Lawyers Were Aware of my Incarceration.

107. The Defendants have been aware of my incar-ceration since at least 1996. In Kleinhammer I, they opposed a motion in limine filed by my parents' counsel to exclude evidence of my conviction. A true and correct copy of their Opposition to Motion in
Limine to Exclude Conviction is attached hereto as Exhibit 18.

108. Thus, the Defendants would have been aware of the likelihood that my claims would be tolled and could have taken steps to protect themselves. The
Defendants also could have written to me in prison and notified me of the change in the statute of limit-ations if they'd wanted to start the clock ticking. They didn't.

CLARIFICATIONS OF MISLEADING FACTS OFFERED BY THE MOVING PARTY

109. The agreement provided that (1) TCSD would deliver its sewage to a designated point on Cannon Street in the unincorporated area of Templeton, located within TCSD, and

transport TCSD sewage from this connection point to the City's wastewater treatment plant. However, the parties later modified that contract by allowing non-Cannon Street connections at many locations. The parties had no rational reason for denying us a similar treatment.

110. Tract 1679 consisted of 52 lots. Lots 48, 49, and 50 belonged to me. I lived in my home on Lot 50.

RICHARD KLEINHAMMER

APPENDIX P

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Bill Miller

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD KLEINHAMMER,

Plaintiff,

vs.

CITY OF PASO ROBLES, TEMPLETON COMMUNITY SERVICES·DISTRICT, BILL MILLER Ex-Manager, JERRY BANGSTON CITY Ex-Manager, RICHARD RAMIREZ, JAMES APP, ROGER PICQUET, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CV 06-0798-JFW (JTL)
(FILE August 4, 2008)

DEFENDANT TEMPLETON COMMUNITY SERVICES DISTRICT'S NOTICE OF RELATED CASES

[CD Local rule 83-1.1.1]

Pursuant to United States District Court for the Central District of California Local Rule 83-1.1.1, Defendants Templeton Community Services District and Bill Miller ("TCSD Defendants") consider the following matter to be a related case: Richard Kleinhammer v. California Department of Corrections, et. al, United States District Court for the Central District of California case number CV08-3843 JFW (AJW) ("CDCR Action"). The cases would involve substantial

duplication of effort if heard by different judges because Richard Kleinhammer is Plaintiff in both actions and alleges in the CDCR Action that acts and omissions of Defendants in that action have adversely affected his ability to prosecute his actions against the TCSD Defendants and Defendants City of Paso Robles, Jerry Bankston, Richard Ramirez, James App, and Roger Picquet ("Paso Robles Defendants") in the present action. Allegations of such interference are alleged in Mr. Kleinhammer's Complaint in the CDCR Action as follows: ¶¶ 22, 31, 33, 34, 42, 51, 54, 108, 172, 236, 325.

At Paragraph 22 of his CDCR Complaint, Mr. Kleinhammer alleges that his "civil litigation at a crucial juncture of depositions phase next is intentionally being undermined by Silva's and Rodriguez orchestrating the attachment of GPS device, like prison garb with their court experience for stigmatization associated with the device."

Mr. Kleinhammer alleges as follows at Paragraph 34 of his CDCR Complaint: "Further on or about April 2, 2008 Agent Silva and Supervisor Rodriguez were informed by plaintiff that the GPS device would interfere with existing litigation in their forcing plaintiff to obtain an injunction to remove it. . . . Plaintiff was consumed and overwhelmed from being shackled to the GPS device which compelled the 230 hours in preparation of the temporary injunction plus 60 hours of charging time since the attachment of the GPS device from April 2, to May 14, 2008. This over shadowed plaintiff efforts to pursue leave to amend granted with respect to three defendants and overall revisions. The time needed to complete further research and sift through documents was sidetracked and interfered with by Silva and Rodriguez actions with intentionally cause and/or knew would result and further were informed it would interfere. The GPS device distraction, discomfort and pain, charging time and intense overwhelming need to remove it caused just enough interference that the third amended complaint was

filed without several defendants and caused damages to the existing litigation, even with an extension of time."

At Paragraph 54 of the CDCR Complaint, Mr. Kleinhammer alleges: "Upon information and belief Agents Fontes solicited Supervisor Rodriguez and set into motion retaliation that would interfere with existing litigation."

At Paragraph 108, Mr. Kleinhammer alleges that the actions of the Defendants in the CDCR Action have caused him damages in the suit against TCSD and Paso Robles as follows: "Further damages that have been and may result from interference with amending complaint in existing litigation, approximately

$250,000.00 to ten million." He makes substantially similar allegations of damages at Paragraphs 172, 263, and 325.

Mr. Kleinhammer alleges in the CDCR Action that the California Department of Corrections defendant' actions interfered with his ability to prosecute the case against TCSD and Paso Robles Defendants. He further alleges damages under 42 U.S.C. section 1983 in the case against TCSD and Paso Robles based on the alleged actions of Defendants in the CDCR Action. Consequently, the TCSD Defendants believe that the cases meet the criteria for a notice of related cases pursuant to Rule 83-1.3.1(c) and have served this notice on all parties in both actions.

Dated: August 4, 2008

CARMEL & NACCASHA, LLP

By: /s/ Michael M. McMahon .

ZIYAD I. NACCASHA

MICHAEL M. MCMAHON

Attorneys for Defendants Templeton Community Services District and Bill Miller

RE: Kleinhammer v. City of Paso Robles, et al.
U.S.D.C. Case No. CV 06-0798 JFW (JTL)
PROOF OF SERVICE

State of California

County of San Luis Obispo

I am employed in the County of San Luis Obispo, State of California. I am over the age of 18 and not a party to the within action. My business address is 1410 Marsh Street, San Luis Obispo, California, 93401.

On August 4, 2008, I served the foregoing document described as DEFENDANT TEMPLETON COMMUNITY SERVICES DISTRICT'S NOTICE OF RELATED CASES on the interested parties in this action

X by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

By placing a true copy thereof enclosed in sealed envelopes addressed as follows:

The following is the procedure in which service of this document was effected:

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Temecula, California, in the ordinary course of business. I am aware that on motion of the party served,

service I s presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE: I delivered such envelope by hand to the offices of the addressee.

BY OVERNIGHT DELIVERY: I deposited such envelope, with delivery fees paid or provided for, in a box or other facility regularly maintained by Federa. Express, or delivered to a driver or courier authorized by Federal Express to receive documents.

BY FACSIMILE: I served the foregoing document by facsimile transmission at the facsimile machine telephone number stated above.

I declare that I am employed in the office of a member of this Bar of this Court at whose direction the service was made.

Executed on August 4, 2008, at San Luis Obispo, California.

/s/ Linda D'Luco

By: Linda D'Luco _____

PROOF OF SERVICE MAILING LIST
Kleinhammer v. City of Paso Robles, et al.
U.S.D.C. Case No. CV 06-0798 JFW (JTL)

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PROOF OF SERVICE MAILING LIST
Kleinhammer v. California Dept. of Corrections and Rehabilitation, et al.
U.S.D.C. Case No. CV 08-03843 JFW (AJW)

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California Dept. of Corrections and Rehabilitation, Sgt. Huerta, James E. Tilton, Shirley Poe, Ed Freeman, Nancy Silva, Marcie Fontes, Tom Rodriguez,

APPENDIX Q

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PLAINTIFF(S)
v.
DEFENDANT(S).

CASE NUMBER CV 06-798-JFW

RESPONSE BY THE COURT TO NOTICE TO
FILER OF DEFICIENCIES IN
ELECTRONICALLY FILED DOCUMENTS

In accordance with the Notice to Filer Of Deficiencies In Electronically Filed Documents

REGARDING:
2/27/09 80
Date Filed Doc. No.

Motion For Reconsideration Of Summary Judgment
Title of Doc.

IT IS HEREBY ORDERED:
The document is accepted as filed
XThe document is stricken and counsel is ordered to file an amended or corrected document by.
The hearing date has been rescheduled to at
Other
Clerk, U.S. District Court By: S. Eagle
Dated: 3/4/09 Deputy Clerk

cc: Assigned District Judge and/or Magistrate Judge

RESPONSE BY THE COURT TO NOTICE TO FILER OF DEFICIENCIES IN ELECTRONICALLY FILED DOCUMENTS
G-112B (01/07)

Supreme Court, U.S.
Filed
FEB 11 2011
OFFICE OF THE CLERK

No. 10-598

In The
Supreme Court of the United States

RICHARD KLEINHAMMER

Petitioner,

v.

CITY OF PASO ROBLES, California, et al.

Respondent(s),

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR REHEARING

RICHARD KLEINHAMMER
Counsel Of Record
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Cayucos, CA 83430-0649
(805) 801-1881
kleinhammerlaw@hotmail.com

QUESTION(s) PRESENTED:

1. Whether a prisoner forced to chose between pursuing *reversal of conviction* and pursuing *civil litigation* for property damages to his home is constitutional. SUP CT. *R.* 10(c)...unsettled.

2. Whether the timing of the *Holland v. Florida* (June 14, 2010) decision created a conflict with this court decision January 18, 2011 denying petitioner's writ of certiorari because the Ninth Circuit June 22, 2010 holding cited cases that pre-dated *Holland v. Florida* and the District court initial February 2009 review pre-dated *Holland v. Florida* for remand to determine if facts in the record entitle petitioner to equitable tolling and whether further evidentiary proceedings are needed. SUP CT. R. 10(c)..conflict.

LIST OF PARTIES

The name of the Petitioner is:

Richard Kleinhammer.

The names of the Respondents are:

City of El Paso De Robles,
(referenced as "CITY")

James App,

Richard Ramirez,

Roger Picquet,

Jerry Bankston,

Templeton Community Services District,(Referenced as "TCSD")

Bill Miller.

Name of Interested Non-Party:

California Department of Corrections (referenced as "CDCR")

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APPENDIX A

A 2006 picture showing the 36 cubic feet of legal files for TRACT 1679 litigation files. Photo of Litigation files that was an exhibit attached to the Third Amended Complaint. (App. 1)

APPENDIX B

1993 letter from City of el Paso de Robles manager to Richard Kleinhammer (petitioner is this case) that this item is being litigated refusing to meet or provide documents. (App. 2-3)

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PETITION FOR REHEARING

Petitioner, Richard Kleinhammer's petition's this court for a rehearing following the January 18, 2011 denial of petition for writ of Certiorari requesting summary reversal.

CONSTITUIONAL AND STATUTORY PROVISIONS INVOVLED

First Amendment:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Govern-ment for a redress of grievances.

Eighth Amendment:
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment:
Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C § 1983:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Cal. Civ. Proc. Code 352 (1994):
Section 352(a)(3): "(a) If a person entitled to bring an action... be, at the time the cause of action accrued, either:" "(3) Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; the time of such disability is not a part of the time limited for the commencement of the action."

Cal Pen Code 2601(d):
2601. Subject only to the provisions of that section, each person described in Section 2600 shall have the following civil rights:
..... (d) To initiate civil actions, subject to a three dollar ($3) filing fee to be collected by the Department of Corrections, in addition to any other filing fee authorized by law, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.

Cal Code Regs. Title 15 Section 3161:
Inmate-owned legal materials/documents, law books and papers shall be limited to the availability of space authorized by section 3190(b) for personal property in the inmate's quarters/living area except as specified in this section. Inmates may possess up to **one cubic foot** of legal materials/ documents related to their active cases, in excess of the six cubic feet of allowable property in their assig-ned quarters/living area. Legal materials/ documents, lawbooks and papers in excess of this limitation shall be disposed of pursuant to section 3191(c). Inmates may request the institution/facility store excess legal materials/documents related to their active cases(s) when such materials/documents exceed this one cubic foot additional allowance. Inmate-owned law books in

excess of the additional allowance shall not be stored by the institution/ facility.

STATEMENT OF THE CASE

This case involves approximately $ 880,000.00 damages to real estate and government denial of access to legal files following notice of claims in which all other TRACT 1679 owners were paid damages except petitioner who was incarcerated.

During incarceration petitioner was forced to chose between pursuing post conviction remedies or pursuing a civil suit. Plus, prison staff refused to permit the civil litigation files to be mailed in on several occasions. In addition title 15 § 3161 only allowed 1 cubic foot. However this space was already taken with post conviction remedies files. And the amount of files in the civil case was "31 boxes" and voluminous files as described and conceded by respondents which respondents kept until petitioner was released. Even if arguendo petitioner was granted one cubic foot of civil files that would only amount to about 3% of the civil litigation. However Plaintiff's legal files were 36 cubic feet shown in the picture EXHIBIT A containing 22 boxes. (App. 1)

In addition plaintiff believed he could sue following release pursuant to California code of civil procedures 352 provided by the library.

Petitioner once released from incarceration requested settlement in February of 2006 which was denied and filed a lawsuit in August of 2006. Plaintiff lawsuit had reached the discovery phase in 2008 when interested party CDCR employees suddenly made petitioner unavailable for 4 months until after discovery closed and also denied him access to his legal files during that time. CDCR's denying access to legal was already alleged in the 2006 complaint against CDCR when the 2008 denial of access to legal files occurred. CDCR (e.g. government) timing at the discovery phase gives the appearance of an interested party intermeddler that rendered pro se ineffective. The 3 VHS tapes labeled CITY COUNCIL and TCSD seized by interested party CDCR further establishes the intent.

The rigid standard applied by the District court was that plaintiff must check the library each year for a change of law despite believing he could sue following release from incarceration pursuant California code of civil procedures 352 which does not address the denial of access to legal files in detail. The District court 2009 opinion only mentions that the complaint asserted equitable estoppel but was

not raised in the opposition to summary judgment.

CDCR employee also conducted ongoing interference during the summary judgment phase taking up 14 hours a week of petitioners time, withholding computers that contained years of petitioner legal research and opposition motions for the case, and were inflicting minor and serious physical injuries that petitioners doctor objected to. Plaintiff was sidetrack and distracted by CDCR employee that even required filing for injunction to attempt to stop CDCR from interfering with doctors treatment as a parolee and to stop continued infliction of injuries on petitioner.

Essentially the rule the lower federal courts have made is go to prison lose your home is perfectly constitutional. The details of notice of claims, respondent keeping the 31 boxes of legal files, respondents awareness of the 1 cubic foot title 15 limitation, and petitioner being denied access to legal files by prison staff and again later by actions of parole staff which respondents were also aware were all swept in to the rigid rule of checking the library every year without the benefit of the *Holland* decision.[1]

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[1] It should further be noted that in *Plata* and *Coleman* pending before this court regarding prison overcrowding inadequate medical care is an issue that carries over to parole because parole agents can and do interfere with even private doctor

Petitioner does not intend this to reargue the denial of the petitioner for writ of certiorari. Attention to the unsettled *Hebbe* and *Allen* issues of choice and the *Holland* issue of detailed review of reasonable not maximum feasible diligence rules.

REASONS FOR GRANTING REHEARING

I. Whether a prisoner forced to chose between pursuing habeas reversal of conviction and civil rights action for damages to real estate during incarceration is constitutional.

Forcing a prisoner to choose between *fourteenth amendment* and *eighth* amendment rights was found impermissible. A prisoner that must choose between using the prison law library and exercising outdoors is impermissible because "an inmate cannot be forced to sacrifice one constitutionally protected right solely because another is respected." *Allen v. City and County of Honolulu*, 39 F.3d 936, 940 (9th Cir.1994).

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medical care, simply a cruel and unusual agency regime. Prison overcrowding also appears to be the reason California changed the law to file suits within 2 years because of litigation cost related to condition of confinement although the policy basis targets frivolous lawsuit unlike petitioner's case in which all other owners except petitioner were paid damages.

cf. *Hebbe v. Pliler* _ F.3d ___ (9th Cir 2010) as modified November 2010 No. 07-17652 2010 U.S. App. Lexis 24018 (prisoner denied both eighth and fourteenth amendment by lockdown).

Petitioner's constitutional rights to both habeas corpus post conviction remedies and 42 U.S.C section 1983 condition of confinement suits were clearly established[2]. Similarly petitioner's rights under California law includes all civil suits[3] Cal Pen Code

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[2] Thus, the "tools" that *Lewis* and *Bounds* require to be provided are those that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement. *Lewis v. Casey*, 518 U.S. 343, 354-55, 116 S.Ct. 2174, (1996).

[3] *Payne, Yarborough, Wantuch, Appollo, and Hoverstein:*

Under state law *Cal. Pen code* 2601(d) a prisoner has a statutory right to initiate civil action. Meaningful access to the courts is the "keystone" of an indigent prisoner's right to defend against and prosecute bona fide civil actions. (*Cal. pen. Code*, section 2601[former] subd. (e). Yarborough v. Superior Court [(1985) 39 Cal.3d 197, 200-201, accord Wantuch v. Davis (1995) 32 Cal.App.4th 786, 792. Generally, a trial court has discretion to choose among these and other remedies in safeguarding a prisoner litigant's right of meaningful access to the courts to prosecute or defend against a civil action threatening his or her interests (*Apollo v. Gyaami* (2008) 167 Cal.App.4th 1468, 1483-1484; citing *Yarbough* and *Wantuch*.).

In California the problem of inmate access to courts in civil matters remains is "a custom far more honored in its breach than in its observance (*Hoverstein v. Superior Court* 74 Cal.App.4th 636, 642-643, 68 Cal.Rptr..2d 197. 202 (Cal.App. 2nd Dist 1999):

2601(d) without the limitations suggested in Casey v. Lewis 518 U.S. at 354-355, Furthermore In *Wantuch* (1995) the court suggested several options including waiting until released from incarceration. *Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792-793.

Petitioner's was subjected to condition of confinement that prohibited him from possessing both the legal files for habeas corpus post conviction remedies and legal files for a civil rights suit. Petitioner like in the *Allen* case was impermissibly forced to choose between constitutional rights. Petition also like in the *Hebbe* was outright denied his constitutional rights to have access to his legal files to even prepare.

Whether petitioner during incarceration can be forced to choose between constitutional rights of post conviction remedies or a civil suit has not been settled by this court. SUP. CT. R 10(c). Furthermore the lower federal courts failure to conduct an

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The Fourteenth Amendment to the United States Constitution prohibits a state from depriving any person of property without due process of law...while the constitutional right of access to the courts has for the most part been related to review of criminal convictions, particularly by writs of habeas corpus, the due process right is much broader; it includes access to all courts, both state and federal, without regard to the type of petition or relief sought. *Payne v. Superior Court of Los Angeles County* (1976) 17 Cal.3d 908, 914, 132 Cal.Rptr. 405, 553 P.2d 565.

analysis and refused to allow discovery on the fact intensive equitable tolling far departed from the accepted and usual course of judicial proceedings (SUP. CT. R. 10(a)) permitting summary reversal (SUP. CT. R. 16.1).

The prison limitation on legal files forced a choice between constitutional rights. As in *Allen* Petitioner being forced to choose between constitutional rights would violate the first amendment right access to court and fourteenth amendment equal protection and Due process clauses. Second Petitioner being outright denied access to his legal files like *Hebbe* violated the fourteenth amendment equal protection and due process clause.

Petitioner request this court to settle whether a prisoner being forced to chose between his constitutional rights (as contoured by California law) is constitutional. And settle if the forced choice and outright denial of a constitutional rights are impediments for constitutional tolling, even if other equitable tolling is denied by the District Court.

II. Whether The January 14, 2011 Denial Of Petitioner For Writ Of Certiorari In This Case Conflicts With This Court June 14, 2010 Decision In *Holland v. Florida* For Remand Because The Lower Court Applied A Rigid per se Rule Without Review Of Details According To Precedent.

Holland was decided June 14 of 2010 after the District Court ruling in February 2009. See *Holland v. Florida,* 560 U.S. , 130 S.Ct. 2549 (June 14, 2010).

The decision in *Holland* holds reasonable diligence does not mean maximum feasible diligence of a prisoner seeking equitable tolling, and recognized prudence that when faced with an equitable, often fact-intensive inquiry, of allowing the lower courts to undertake it in the first instance.[4] *Holland v. Florida* 560 U.S. , 130 S.Ct. 2549 (June 14, 2010).

The Ninth Circuit and District court failed to considered in detail the facts of the petitioner case. Like in *Holland* an application of a rigid standard that required "plaintiff to check the library each year for a change of law" which did not address the denial of access to legal files in detail for which there is Ninth Circuit precedent for guidance[5]. *Lott v. Mueller* 403 F.3d 918, 924 (9th Cir. 2002).

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[4] Further the cases used by the Ninth Circuit Court of Appeals pre-dated the 2005 holding in *Pace v. Diguglielmo* 544 U.S. 408 (2005).

[5] A prisoner denied access to his legal files by prison staff was granted equitable tolling *Lott v. Mueller* 403 F.3d 918, 924 (9th Cir. 2002)

Petitioner request this case be remanded to determine whether the record entitles petitioner to equitable tolling and whether further evidentiary proceedings might indicate petitioner should prevail pursuant to *Holland v. Florida* standard of diligence. The timing of the lower court decision were without the benefit of *Holland v, Florida*. In addition the lower court clearly applied a per se standard that was to rigid without considering precedent as in fn 4 above and denial of access to legal file details as fn 5 below. Also see SUP Ct. R. 10 (c) conflict and SUP 10(a) departed from usual course.

Two similar *Holland* type claims can be made one being petitioner's "fear of retaliation if litigating while incarcerated" and second related to Equitable Estoppel. In 2009 the District court acknowledged that the com-plaint asserted equitable estoppel. The evidence shows the CITY manager took the position of litigation with petitioner (Appendix B) yet the CITY without notifying petitioner changed their position for summary judgment arguments. The Ninth circuit has precedent to provides guidance for the in detail review pursuant to *Holland*. For example when respondent are aware they might be

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a precedent consideration for *Holland* 's in detail review of the reasonable standard of diligence.

subject to future suit by petitioner[6] but here were also aware of petitioners file access impediments.

Other than mentioning that petitioner complaint alleged equitable tolling the District court did not review in detail any facts. Nor was the fear of retaliation if litigating while incarcerated reviewed in detail. Instead the 2006 allegation was proven in 2008 when CDCR employee actually sent another prisoner to threaten petitioner following CDCR threats.

There was a confluence extraordinary circumstances to await release before filing suit as above described which included parole staff repeating the denial of access to legal files and numerous threats of arrest[7]. Certainly if ones parents can forebear filing suit the petitioner directly threatened may also. The lower court simply did not make a detailed review of anything other than their rigid rule requiring going to the library each year to see if Cal Civ Proc Code 352 changed for equitable

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[6] In *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir. 2002) shareholders were not given notice they might be subject to suit by him (Azer) personally separate from the corporation

[7] *Atecq v. Najor* 15 Cal.App.4th 1351, 1356(Cal.App.4th Dist. 1993)(3 years duress forbearance...tolled the statute of limitation where threats were made to have the plaintiff's son arrested e.g estoppels).

tolling and is to rigid to withstand the *Holland* standard.

CONCLUSION

For the foregoing reasons, petitioner Richard Kleinhammer respectfully request that this Court grant his Petition for rehearing and remand for further consideration in light of *Holland v. Florida*, 560 U.S. , 130 S.Ct. 2459, 177 L.Ed.2d 130, 2010 U.S. LEXIS 4946 (2010) and *Hebbe* or *Allen* barring being forced to choose between constitutional rights.

Respectfully submitted,

Richard Kleinhammer
pro se

DOCUMENT A



BEST AVAILABLE COPY

DOCUMENT B

City of el Paso de Robles
"The pass of the Oaks"

February 13, 1993

Richard Kleinhammer
1135 Golden Meadow Drive
Paso Robles, CA 93446

Re: Fax dated 2/23/93

Dear Mr. Kleinhammer:

Enclosed is the letter that was sent to your father, John Kleinhammer dated February 12, 1993 indicating that Templeton Community Service District should be contacted as to how you may obtain service to your property.

In response to meeting with me to review any proposed conditions or agreements of approval for point of service, this item is being litigated and further meetings will not be scheduled without both attorneys present.

Many of your request deal with opinions and are not request for documents. therefore, we appreciate your attorneys contacting Roger Picquet, City Attorney, at P.O. Box 922, San Luis Obispo, CA 93406 if you request additional information.

sincerely

s/ Richard Ramirez
Richard Ramirez
City Manager

RJR:ca

cc: City Council
Roger Picquet, City Attorney

encl.

City Manager * Post Office Box 307 * Paso Robles, California 93447-0307

CERTIFICATE OF COMPLIANCE

As a pro se petitioner of record, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2

s/ Richard Kleinhammer

Pro se Petitioner,
Richard Kleinhammer